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1982 OMNIBUS TERRITORIES

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

COMPLETED

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2088

A BILL TO REQUIRE TREATMENT OF CITIZENS OF THE NORTHERN MARIANA ISLANDS AS CITIZENS OF THE UNITED STATES OF AMERICA FOR PURPOSES OF PARTICULAR FEDERAL STATUTES

S. 2089

A BILL TO CLARIFY THE APPLICABILITY OF THE FEDERAL TORT CLAIMS ACT TO CLAIMS ARISING IN THE NORTHERN MARIANA ISLANDS

S. 2090

A BILL TO AMEND THE APPLICATION OF THE CLEAN AIR ACT TO THE NORTHERN MARIANA ISLANDS

S. 2632

A BILL AUTHORIZING THE GOVERNMENT OF AMERICAN SAMOA TO ISSUE BONDS AND OTHER OBLIGATIONS, AND FOR OTHER PURPOSES

S. 2633

A BILL TO AMEND THE ORGANIC ACT OF GUAM AND THE REVISED ORGANIC ACT OF THE VIRGIN ISLANDS TO TRANSFER THE AUDIT AUTHORITY AND RELATED STAFF OF THE OFFICES OF THE GOVERNMENT COMPTROLLERS FOR GUAM, THE VIRGIN ISLANDS, THE TRUST TERRITORY OF THE PACIFIC ISLANDS, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA TO THE OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR, AND FOR OTHER RELATED PURPOSES

S. 2729

A BILL TO AMEND OR REPEAL CERTAIN PROVISIONS OF THE ORGANIC ACTS APPLICABLE TO THE VIRGIN ISLANDS, AND FOR OTHER PURPOSES

S. 2888

A BILL DIRECTING THE PRESIDENT TO PREPARE AND SUBMIT AN ANNUAL REPORT ON THE STATE OF THE INSULAR AREAS TO CONGRESS, AND FOR OTHER PURPOSES

SEPTEMBER 13, 1982

Publication No. 97-98

Printed for the use of the Committee on Energy and Natural Resources

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I

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1982 OMNIBUS TERRITORIES

MONDAY, SEPTEMBER 13, 1982

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 3110, Dirksen Office Building, Hon. James A. McClure, chairman, presiding.

Present: Senators McClure, Johnston, and Ford.

Also present: James P. Beirne, counsel.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. The hearing will come to order. This hearing has been scheduled to receive testimony on several measures affecting the territories and insular areas of the United States. Copies of the legislation and the departmental reports will be made a part of the hearing record at this point.

[The texts of the bills and reports follow:]

97TH CONGRESS
2D SESSION

S. 2088

To require treatment of citizens of the Northern Mariana Islands as citizens of the United States of America for purposes of particular Federal statutes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9 (legislative day, JANUARY 25), 1982

Mr. McCLURE (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To require treatment of citizens of the Northern Mariana Islands as citizens of the United States of America for purposes of particular Federal statutes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States of America by the United States of America shall not bar the United States of America from paying compensation to or employing citizens of the Northern Mariana Islands.

SEC. 2. STATUTES RELATING TO THE UNIFORMED SERVICES.—In accordance with the Covenant to Establish a

Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved on March 24, 1976, by Public Law 94-241), a citizen of the Northern Mariana Islands who declares in writing an intent to become a citizen, and not a national, of the United States of America upon full implementation of such Covenant shall be deemed a citizen of the United States of America for purposes of—

(a) sections 311, 510, 532, 591, 2004, 2031, 2104, 2107, 2122, 4348, 6019, 6911, 6958, 6959, 8257, and 9348 of title 10, United States Code;

(b) sections 195, 371, 706, and 823 of title 14, United States Code; and

(c) section 313 of title 32, United States Code.

SEC. 3. STATUTES RELATING TO THE FEDERAL EMPLOYMENT.—Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) sections 5342, 5343, 5561, 5595, 5912, 5922, 6301, 7103, 7532, 8171, 8501, 8701, and 8901 of title 5, United States Code;

(b) section 22 of title 13, United States Code;

(c) section 2 of Public Law 86-91 (73 Stat. 213; 20 U.S.C. 901);

(d) sections 301–03 of the Act of January 27, 1943 (ch. 36, 62 Stat. 6), as amended (22 U.S.C. 1451–53);

(e) section 636 of Public Law 87–195 (75 Stat. 424), as amended (22 U.S.C. 2396);

(f) sections 5 and 6 of Public Law 87–293, 75 Stat. 612, as amended (22 U.S.C. 2504–05);

(g) sections 103, 301, 312, 403, 409, 504, 608, 901, 903, 904, and 1101 of Public Law 96–465 (94 Stat. 2071; 22 U.S.C. 3903, 3941, 3952, 3963, 3969, 3984, 4008, 4081, 4083, 4084, and 4131);

(h) section 15 of Public Law 90–202 (81 Stat. 602), as added by section 28(b)(2) of Public Law 93–259 (88 Stat. 55), as amended (29 U.S.C. 633a);

(i) sections 235 and 4105 of title 38, United States Code;

(j) section 203 of the Act of July 1, 1944 (ch. 373, 53 Stat. 682), as amended (42 U.S.C. 204);

(k) section 104 of Public Law 93–113 (87 Stat. 394; 42 U.S.C. 4954); and

(l) Civil Service Rules VII and VIII (5 C.F.R. parts 7 and 8).

SEC. 4. STATUTES RELATING TO PROTECTION AND SERVICES IN FOREIGN COUNTRIES.—Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) sections 351 and 1486 of title 10, United States Code;

(b) section 498 of the Act of June 17, 1930 (ch. 497, 46 Stat. 590), as amended (19 U.S.C. 1498);

(c) subsection (b) of section 502 of Public Law 93-618 (88 Stat. 1978; 19 U.S.C. 2462(b));

(d) section 2001 of the Revised Statutes of 1878 (22 U.S.C. 1732);

(e) section 108 of Public Law 95-105 (91 Stat. 845; 22 U.S.C. 2151n-1);

(f) sections 601 and 620 of Public Law 87-195 (75 Stat. 424), as amended (22 U.S.C. 2351 and 2370);

(g) section 3 of the Act of August 1, 1956 (ch. 841, 70 Stat. 890; 22 U.S.C. 2670);

(h) section 7 of Public Law 96-8 (93 Stat. 14; 22 U.S.C. 3306);

(i) sections 1707, 1709, 1711, 1734, and 1737 of the Revised Statutes of 1878, as amended (22 U.S.C. 4193, 4195, 4197, 4217, and 4218);

(j) section 1 of the Act of December 23, 1944 (ch. 716, 58 Stat. 921), as amended (31 U.S.C. 492a);

(k) sections 3048 and 3689 of the Revised Statutes of 1878, as amended (31 U.S.C. 711);

(l) sections 4294 and 4295 of the Revised Statutes of 2878 (33 U.S.C. 382 and 383);

(m) section 1113 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by section 302 of Public Law 87-64 (75 Stat. 131), and as amended (42 U.S.C. 1313);

(n) section 521 of Public Law 94-163, 89 Stat. 871 (42 U.S.C. 6391); and

(o) sections 2, 8, 10, and 12 of the Act of October 6, 1917 (ch. 106, 40 Stat. 411), as amended (50 U.S.C. App. 2, 8, 10, and 12).

SEC. 5. STATUTES RELATING TO COMMERCE.—Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) sections 302, 310D, 311, and 321 of Public Law 87-128, 75 Stat. 294, as amended (7 U.S.C. 1922, 1934, 1941, and 1961);

(b) section 5146 of the Revised Statutes of 1878, as amended (12 U.S.C. 72);

(c) subsection (a) of section 25 of the Act of December 23, 1913 (ch. 6, 38 Stat. 251), as added by the Act of December 24, 1919 (ch. 18, 41 Stat. 378), and as amended (12 U.S.C. 619);

(d) subsection (a) of section 7 of the Act of July 22, 1932 (ch. 522, 47 Stat. 725), as amended (12 U.S.C. 1427(a));

(e) subsection (b) of section 5.1 of Public Law 92-181 (85 Stat. 583; 12 U.S.C. 2222);

(f) subsection (i) of section 44 of the Act of July 5, 1946 (ch. 540, 60 Stat. 427), as amended (15 U.S.C. 1126(i));

(g) subsection (b)(7) of section 4 of the Act of August 8, 1956 (ch. 1036, 70 Stat. 1119), as amended (16 U.S.C. 742c(b)(7));

(h) subsection (e) of section 4 of the Act of June 10, 1920 (ch. 285, 41 Stat. 1063), as amended (16 U.S.C. 797(e));

(i) subsection (b) of section 101 of Public Law 94-553 (90 Stat. 2541; 17 U.S.C. 104(b));

(j) subsection (a) of section 526 of the Act of June 17, 1930 (ch. 497, 46 Stat. 590), as amended (19 U.S.C. 1526(a));

(k) subsection (a)(5) of section 2 of the Act of June 20, 1936 (ch. 638, 49 Stat. 1559), as amended (20 U.S.C. 107a(a)(5));

(l) section 238 of Public Law 87-195 (75 Stat. 424), as added by section 105 of Public Law 91-175 (83 Stat. 805), and as amended (22 U.S.C. 2198);

(m) section 897 of the Internal Revenue Code of 1954, as added by subsection (a) of section 1122 of Public Law 96–499 (94 Stat. 2599; 26 U.S.C. 897);

(n) subsection (b)(7) of section 622 of Public Law 96–294 (94 Stat. 611; 30 U.S.C. 1522(b)(7));

(o) subsection (5) of section 3 of Public Law 93–627 (88 Stat. 2126; 33 U.S.C. 1502(5));

(p) subsection (f)(3) of section 514 of the Act of July 15, 1949 (ch. 338, 63 Stat. 413), as added by subsection (a) of section 804 of Public Law 87–70 (75 Stat. 149), and as amended (42 U.S.C. 1484(f)(3));

(q) subsection (d) of section 103 and subsection (d) of section 104 of the Act of August 1, 1946 (ch. 724, 60 Stat. 754), as added by section 1 of the Act of August 30, 1954 (ch. 1073, 68 Stat. 921), and as amended (42 U.S.C. 2133(d) and 2134(d));

(r) subsection (b)(2)(A) of section 7 of Public Law 93–577 (88 Stat. 1878; 42 U.S.C. 5906(b)(2)(A));

(s) subsection (p)(1) of section 19 of Public Law 93–577 (88 Stat. 1878), as added by subsection (b) of section 207 of Public Law 95–238 (92 Stat. 53; 42 U.S.C. 5919(p)(1));

(t) subsection (b) of section 179 of Public Law 96–294 (94 Stat. 611; 42 U.S.C. 8779(b)(4));

(u) subsection (a)(3) of section 2, subsection (a) of section 101, and subsection (e)(2)(C) of section 108 of Public Law 96–320, 94 Stat. 974 (42 U.S.C. 9101(a)(3); 9111(a); and 9118(e)(2)(C));

(v) section 4219 of the Revised Statutes of 1878, as amended (46 U.S.C. 121);

(w) section 4131 of the Revised Statutes of 1878, as amended (46 U.S.C. 221);

(x) section 1 of the Act of August 1, 1939 (ch. 409, 53 Stat. 1145), as amended (46 U.S.C. 242);

(y) section 4377 of the Revised Statutes of 1878, as amended (46 U.S.C. 325);

(z) section 5 of the Act of June 25, 1936 (ch. 816, 49 Stat. 1930; 46 U.S.C. 672a);

(aa) section 36 of the Act of September 7, 1916 (ch. 451, 39 Stat. 728; 46 U.S.C. 834);

(bb) sections 302, 501, 509, 601, 809(a), 1103, and 1104 of the Act of June 29, 1936 (ch. 858, 49 Stat. 1985), as amended (46 U.S.C. 1132, 1151, 1159, 1171, 1213, 1273, and 1274);

(cc) subsection (a) of section 203 of Public Law 96–320 (94 Stat. 974; 46 U.S.C. 1279c(a));

(dd) sections 1201 and 1203 of the Act of June 29, 1936 (ch. 858, 49 Stat. 1985), as added by the Act of September 7, 1950 (ch. 906, 64 Stat. 773), and as amended (46 U.S.C.1281 and 1283);

(ee) sections 1301, 1303, 1304, and 1306 of Public Law 96-453 (94 Stat. 1997; 46 U.S.C. 1295, 1295b, 1295c, and 1295e);

(ff) subsection (l)(1) of section 303 and subsection (b) of section 310 of the Act of June 19, 1934 (ch. 652, 48 Stat. 1064), as amended (47 U.S.C. 303(l)(1) and 310(b));

(gg) subsection (16) of section 101, section 104, and subsection (d)(4) of section 401 of Public Law 85-726 (72 Stat. 731), as amended (49 U.S.C. 1301(16), 1304, and 1371(d)(4));

(hh) section 418 of Public Law 85-726 (72 Stat. 731), as added by subsection (a) of section 17 of Public Law 95-163 (91 Stat. 1278), and as amended (49 U.S.C. 1388); and

(ii) sections 501, 602, and 1303 of Public Law 85-726 (72 Stat. 731), as amended (49 U.S.C. 1401, 1422, and 1533).

SEC. 6. STATUTES RELATING TO POLITICAL AND CIVIL RIGHTS.—Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) section 319 of Public Law 92-225 (86 Stat. 3), as added by subsection (2) of section 112 of Public Law 94-283 (90 Stat. 475), and as redesignated by subsection (5) of section 105 of Public Law 96-187 (93 Stat. 1339; 2 U.S.C. 441e);

(b) subsection (a)(2) of section 3 of Public Law 93-579 (88 Stat. 1896), as amended (5 U.S.C. 552a(a)(2));

(c) sections 241 and 243, subsection (b)(5) of section 245, subsection (a) of section 4000, and subsection (b) of section 4100 of title 18, United States Code;

(d) sections 4081 and 4082 of the Revised Statutes of 1878, as amended (22 U.S.C. 257 and 258);

(e) subsection (b)(2) of section 1 of Act of June 8, 1938 (ch. 327, 52 Stat. 631), as amended (22 U.S.C. 611);

(f) sections 1343, 1344, 1391, 1443, 1861, 1862, 1863, and 1865 of title 28, United States Code;

(g) section 505 of the Act of June 30, 1948 (ch. 758, 62 Stat. 1115), as added by section 2 of Public Law 92-500 (86 Stat. 816; 33 U.S.C. 1365);

(h) subsection (a)(1) of section 2004 of the Revised Statutes of 1878, as amended (42 U.S.C. 1971(a)(1));

(i) section 2, subsection (b) of section 3, section 4, and subsection (a) of section 10 of Public Law 89-110 (79 Stat. 437; 42 U.S.C. 1973, 1973a(b), 1973b, and 1973h(a));

(j) subsection (a) of section 201 of Public Law 89-110 (79 Stat. 437), as added by section 6 of Public Law 91-285 (84 Stat. 314), as amended (42 U.S.C. 1973aa(a));

(k) section 203 of Public Law 89-110 (79 Stat. 437), as added by section 301 of Public Law 94-73 (89 Stat. 400; 42 U.S.C. 1973aa-1a);

(l) section 104 of Public Law 85-315 (71 Stat. 634), as amended (42 U.S.C. 1975c);

(m) section 1979 of the Revised Statutes of 1878, as amended (42 U.S.C. 1983);

(n) section 1980 of the Revised Statutes of 1878 (42 U.S.C. 1985);

(o) section 702 of Public Law 88-352 (78 Stat. 241), as amended (42 U.S.C. 2000e-1);

(p) section 717 of Public Law 88-352 (78 Stat. 241), as added by section 11 of Public Law 92-261 (86 Stat. 103; 42 U.S.C. 2000e-16);

(q) section 2 of the Act of March 2, 1917 (ch. 145, 39 Stat. 951), as amended (48 U.S.C. 737);

(r) subsection (i) of section 101 of Public Law 95-511 (92 Stat. 1783; 50 U.S.C. 1801);

(s) subsection (b)(3) of section 10 of the Act of June 24, 1948 (ch. 625, 62 Stat. 604), as amended (50 U.S.C. App. 460(b)(3));

(t) section 105 of the Act of October 17, 1940 (ch. 888, 54 Stat. 1178), as added by section 4 of the Act of October 6, 1942 (ch. 581, 56 Stat. 769; 50 U.S.C. App. 514); and

(u) section 512 of the Act of October 17, 1940 (ch. 888, 54 Stat. 1178; as amended (50 U.S.C. App. 572).

SEC. 7. STATUTES RELATING TO FEDERAL PROGRAMS AND BENEFITS.—Citizens of the Northern Mariana Islands shall be deemed citizens of the United States of America for purposes of—

(a) subsection (f) of section 6 of Public Law 88-525 (78 Stat. 703), as amended (7 U.S.C. 2015(f));

(b) subsection (a) of section 2545 of title 10, United States Code;

(c) subsection (m)(2) of section 2[3] of the Act of September 21, 1950 (ch. 967, 64 Stat. 873), as added by section 6(c)(4) of Public Law 95-369 (92 Stat. 607; 12 U.S.C. 1813(m)(2));

(d) subsection (b) of section 500 of title 14, United States Code;

(e) paragraphs (4) and (5) of subsection (a) of section 4 of Public Law 88–578 (78 Stat. 897), as added by section 2 of Public Law 92–347 (86 Stat. 459), as amended, and by subsection (2) of section 9 of Public Law 96–344 (94 Stat. 1133; 16 U.S.C. 460l–6a(a) (4) and (5));

(f) section 29 of the Act of August 1, 1956 (ch. 841, 70 Stat. 890), as added by section 2201 of Public Law 96–465 (94 Stat. 2071; 22 U.S.C. 2701);

(g) section 2 of Public Law 95–524 (92 Stat. 1909; 29 U.S.C. 834(e) and 993(b)(1)(C));

(h) subsection (g) of section 9 of the Act of March 4, 1927 (ch. 509, 44 Stat. 1424), as amended (33 U.S.C. 909(g));

(i) subsection (b) of section 624 of title 38, United States Code;

(j) subsection (d)(12) of section 789, formerly section 776, of the Act of July 1, 1944 (ch. 373, 58 Stat. 682), as added by subsection (a) of section 3 of Public Law 93–154 (87 Stat. 594), as amended (42 U.S.C. 295g–8(d)(12));

(k) subsection (b)(3) of section 2 and section 4 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as amended (42 U.S.C. 302(b)(3) and 304);

(l) subsection (t) of section 202 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by subsection (a) of section 118 of the Act of August 1, 1956 (ch. 836, 70 Stat. 807), and as amended (42 U.S.C. 402(t));

(m) subsection (a)(4) of section 103 of Public Law 89-97 (79 Stat. 285), as amended (42 U.S.C. 426a(a)(4));

(n) subsection (a)(3) of section 228 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by subsection (a) of section 302 of Public Law 89-368 (80 Stat. 38), as amended (42 U.S.C. 428(a)(3));

(o) subsection (b)(2) of section 1002 and section 1004 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as amended (42 U.S.C. 1202(b)(2) and 1204);

(p) subsection (b)(2) of section 1402 and section 1404 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by section 351 of the Act of August 29, 1950 (ch. 809, 64 Stat. 477; 42 U.S.C. 1352(b)(2) and 1354);

(q) subsection (a)(1)(B) of section 1614 and subsection (a)(3) of section 1818 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by sections 301 and 202, respectively, of Public Law 92-603 (86 Stat. 1329), and as amended (42 U.S.C. 1382c(a)(1)(B) and 1395i-2(a)(3));

(r) subsection (2) of section 1836 and subsection (b)(4) of section 1902 of the Act of August 14, 1935 (ch. 531, 49 Stat. 620), as added by subsection (a) of section 102 and subsection (b) of section 121, respectively, of Public Law 89-97 (79 Stat. 285; 42 U.S.C. 1395o(2) and 1396a(b)(4));

(s) subsection (b) of section 2 of the Act of August 16, 1941 (ch. 357, 55 Stat. 622; 42 U.S.C. 1652(b));

(t) subsection (c) of section 101 of the Act of December 2, 1942 (ch. 668, 56 Stat. 1028), as amended (42 U.S.C. 1701(c));

(u) section 10 of the Act of May 10, 1950 (ch. 171, 64 Stat. 149), as amended (42 U.S.C. 1869);

(v) subsection (c) of section 2 of Public Law 86-209 (73 Stat. 431; 42 U.S.C. 1881(c)); and

(w) section 2 of the Act of August 3, 1950 (ch. 520, 64 Stat. 397; 42 U.S.C. 1922).

SEC. 8. GEOGRAPHIC APPLICABILITY OF LAWS UNAFFECTED.—Nothing in this Act shall extend to the Northern Mariana Islands any law not otherwise geographically applicable to or within the Northern Mariana Islands.

SEC. 9. STATUTORY CONSTRUCTION.—Citizens of the Northern Mariana Islands shall be deemed citizens of the United States for purposes of any provision requiring United States citizenship as a prerequisite to receipt of any benefit, right, privilege, or immunity in any statute made applicable to the Northern Mariana Islands by the terms of that statute or by operation of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved on March 24, 1976, by Public Law 94-241).

SEC. 10. DEFINITION.—For purposes of this Act, "citizens of the Northern Mariana Islands" are those persons defined as United States citizens or United States nationals in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977.

SEC. 11. EXPIRATION.—This Act and the rights and privileges extended hereunder shall expire upon establishment of the Commonwealth of the Northern Mariana Islands.

○

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 10 1982

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for views of the Department of the Interior on S. 2088, a bill "To require treatment of citizens of the Northern Mariana Islands as citizens of the United States of America for purposes of particular Federal statutes."

The Department of the Interior defers to the Department of Justice on S. 2088.

The Office of Management and Budget has advised that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Pedro A. Sanjuan
ASSISTANT SECRETARY

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 10 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
SEP 13 1982
WASHINGTON, D.C. 20510

Honorable James A. McClure
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to your request for the views of the Department of Justice on S. 2088, 97th Cong., 2d Sess., a bill "to require treatment of citizens of the Northern Mariana Islands as citizens of the United States of America for purposes of particular Federal statutes." The Department of Justice is opposed to the overly broad approach taken by the bill toward the solution of the problem caused by the delay in the acquisition of United States citizenship by the citizens of the Northern Mariana Islands. We would have no objection to remedial legislation addressed to a few specific areas in which actual hardship is apparent.

The Northern Mariana Islands, although separately administered, are a part of the Trust Territory of the Pacific Islands over which the United States has jurisdiction but not sovereignty. Article 3 of the Trusteeship Agreement with the Security Council of the United Nations, 61 Stat. (pt. 3) 3302. Its citizens are not citizens of the United States. Under a Covenant concluded between the United States and the Northern Mariana Islands and approved by Congress on March 29, 1976, 90 Stat. 263, 48 U.S.C. § 1681 note, the United States will acquire sovereignty over the Northern Mariana Islands upon the termination of the Trusteeship. The citizens of the Islands will then become citizens of the United States. In the meantime, most laws of the United States became applicable to the Northern Mariana Islands as of January 9, 1978. Sections 502(a), 1003(a)(b) of the Covenant, Proclamation No. 4534 of October 24, 1977, 48 U.S.C. § 1681 note.

When the Covenant was originally concluded, it was assumed that the Trusteeship would end by 1981. It now appears that this event may take another two years. The problem which gives rise to this bill is that many of the statutes which have become applicable to the Northern Mariana Islands limit the rights or benefits which they confer to citizens of the United States. Since the interim period during which the citizens of the Northern Mariana Islands will not be citizens of the United States has become considerably longer than originally anticipated, this bill is designed to confer upon the citizens of the Northern Mariana Islands many, if not most, of the rights of citizens of the United States.

The bill approaches the problems created by the delay in the acquisition of United States citizenship by the citizens of the Northern Mariana Islands in two ways. First, §§ 2-7 would provide that the citizens of the Northern Mariana Islands would be deemed to be citizens of the United States for the purposes of hundreds of specifically listed statutory provisions. Second, § 9 would provide generally that the citizens of the Northern Mariana Islands shall be deemed to be citizens of the United States for the purpose of any provision requiring United States citizenship as a prerequisite for any benefit right, privilege, or immunity in any statute made applicable to the Northern Mariana Islands either by the terms of that statute or by the Covenant.

We have serious objections to either approach. Our difficulty with § 9 is that it is so open-ended that its effect cannot be foreseen with any degree of precision. While §§ 2-7 appear to be more precise, the very number of sections involved makes it virtually impossible to check and evaluate the potential impact of the bill. In general, we lack the facilities to check the accuracy of the citations 1/ of the provisions of this bill, and the completeness of the bill. 2/

In addition to the difficulties created by the extremely broad scope of the bill, we question the wisdom of conferring upon the citizens of the Northern Mariana Islands the benefits, but not the duties, of citizenship as this bill apparently does. Another problem -- on which we defer, however, to the views of the Department of State -- is that the wholesale grant of the rights of citizenship to the inhabitants of the Northern Mariana Islands prior to the termination of the Trusteeship might be considered by the United Nations as a further step toward the annexation of the Northern Mariana Islands and as discrimination against the rest of the Trust Territory. This may aggravate the rather delicate problems we have -- even with our friends -- in the United Nations resulting from the conclusion of the Covenant and the prospective acquisition of sovereignty over the Northern Mariana Islands by the United States.

1/ A few random spot checks disclosed at least one typographical error. 18 U.S.C. § 4000, referred to on p. 10, line 10, should probably be 18 U.S.C. § 4001.

2/ It appears that 24 U.S.C. § 321 could have been included in § 7 of the bill.

In our view alternative methods, some of which have already been used, to remedy the problems of hardship caused by the unforeseen postponement of the termination of the Trusteeship and the resulting delay in the acquisition of United States citizenship for the citizens of the Northern Mariana Islands, are available and have actually been utilized.

To begin with, it should be realized that serious problems are created only by a relatively small number of the statutory provisions cited in the bill. Where such problems arose in the past, they could be remedied by administrative action which gave the citizens of the Northern Mariana Islands status as citizens of the United States for the purposes of specific legislation if no administrative action were authorized or taken. Above all, § 1004(a) of the Covenant enables the President to suspend statutory citizenship requirements by way of proclamation. This has been done on three occasions in the past. See Proclamation No. 4588 of May 9, 1978, and Proclamation No. 4726 of February 20, 1980, 48 U.S.C. § 1681 note. While this procedure is time consuming and places a considerable burden on the Executive, it permits a precise evaluation of the consequences of a waiver of the citizenship requirement in each situation.

For the above reasons we oppose enactment of S. 2088, however, in the event that it should be decided to proceed with the bill, we have the following comments:

1. Section 9 should be deleted in view of its blunderbuss approach.

2. Section 10 refers to the Constitution of the Northern Mariana Islands "as approved by Presidential Proclamation 4534 of October 24, 1977." The Department of Justice strongly objects to this phraseology, which is inconsistent with § 202 of the Covenant and Proclamation No. 4534. Section 202 provides that the Constitution of the Northern Mariana Islands "will be submitted for approval to the President on behalf of the Government of the United States" and that it "will be deemed to have been approved six months after its submission to the President [of the United States] unless sooner approved or disapproved." Proclamation No. 4534 recites this provision of the Covenant and continues "[t]he six-month period of Section 202 of the Covenant having expired on October 22, 1977, I am pleased to announce that the Constitution of the Northern Mariana Islands is hereby deemed approved." The question whether the President actually approved the Constitution or merely announced that it was "deemed approved" by inaction of the Government of the United States was the subject of considerable dispute between the Government of the United States and the Government of the Northern Mariana

Islands. For the sake of accuracy, we urge that the clause "as approved . . . 1977" be deleted and replaced by the phrase "deemed approved as announced by Presidential Proclamation 4534 of October 24, 1977."

3. Finally, we urge the deletion of § 11 of the bill. According to the Act, the rights and privileges under it will expire upon the establishment of the Commonwealth of the Northern Mariana Islands, i.e., at the time when the trusteeship terminates, the United States acquires sovereignty over the Northern Mariana Islands, and the citizens of the Islands become citizens of the United States with the exception of those who opt to become United States noncitizen nationals. Covenant §§ 302, 1003(c). This section casts doubt on the status of the rights and privileges acquired during the time in which the Act would be in effect.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnell
Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

DEPARTMENT OF STATE
Washington, D.C. 20520

SEP 1 0 1982

Dear Mr. Chairman:

In response to your request of August 16, 1982, the Department of State submits the following report on S. 2088, a bill "(t)o require treatment of citizens of the Northern Mariana Islands as citizens of the United States for purposes of particular federal statutes." The Department of State considers that the approach taken by the proposed bill is inappropriate for the reasons stated below. We would not necessarily object, however, to remedial legislation which, like certain Executive action discussed below, would be designed to grant relief by suspending federal statutory U.S. citizenship requirements in those specific cases where such requirements have caused Northern Marianas citizens particular hardship.

Under the proposed bill, S.2088, citizens of the Northern Mariana Islands "shall be deemed citizens of the United States of America" for purposes of certain specified statutes relating to the uniformed services, federal employment, protection and services in foreign countries, federal programs and benefits,

The Honorable
James A. McClure,
Chairman,
Committee on Energy and Natural Resources,
United States Senate.

and other purposes.1/ Any distinction which may be intended between full citizenship status and being "deemed a citizen" for certain purposes might be obscured by the very broad scope of the purposes so specified in the proposed bill. Since this bill would confer for most practical purposes the benefits of U.S. citizenship to citizens of the Northern Marianas prior to the acquisition of U.S. sovereignty over that area, the bill would not be consistent with historical U.S. practice in this regard.

The collective extension of U.S. citizenship or nationality historically has been linked closely to the acquisition of U.S. sovereignty over the area concerned. All inhabitants of Alaska, except members of Indian tribes and persons who acted to preserve their Russian allegiance, became U.S. citizens on March 30, 1867, the date of the treaty of cession from Russia. By act of Congress, U.S. citizenship was conferred on all persons who were citizens of Hawaii at the time of annexation (August 12, 1898). The Philippine Islands, Puerto Rico and Guam were ceded to the United States by Spain under the Treaty of Paris, dated December 10, 1898 and ratified April 11, 1899. Under the terms of the treaty, Spanish subjects in the ceded territories were given one year within which to act to preserve their Spanish citizenship, failing which they were deemed to have accepted noncitizen American nationality at the time of cession. Congress subsequently extended U.S. citizenship to Puerto Ricans (acts of 1917 and later years) and Guamanians

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1/ Under section 2 of the bill, relating to the uniformed services, benefits would be conferred only upon a citizen of the Northern Marianas "who declares in writing an intent to become a citizen, and not a national, of the United States of America" upon full implementation of the Covenant to Establish a Commonwealth of the Northern Marianas. Technically, it is not possible to become "a citizen, and not a national, of the United States." Under section 101(a)(22) of the Immigration and Nationality Act (8 USC 1101(a)(22)), the term "national of the United States" is defined to mean "(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." Thus, the group of "citizens" is included within the broader group of "nationals of the United States." Accordingly, if the proposed bill is adopted, a technical amendment should be made so that section 2 of the bill would read as follows:

> ... a citizen of the Northern Mariana Islands who declares in writing an intent to become a citizen, and not a national only, of the United States of America....

(Organic Act of August 1, 1950).2/ In none of these cases, nor in those involving other U.S. territories and possessions -- e.g. the Virgin Islands (1917); American Samoa (1900); Swains Island (1925) -- did the United States attempt to extend U.S. citizenship or nationality to the inhabitants prior to the time that sovereignty was acquired.

In addition to our concern over the proposed bill's inconsistency with historical U.S. practice, the Department considers that this approach, if viewed as a wholesale grant of citizenship, could be regarded by the United Nations and the international community as an inappropriate step toward annexation of the Northern Mariana Islands prior to termination of the Trusteeship. As discussed above, historical U.S. practice concerning the extension of U.S. citizenship only to inhabitants of areas over which the U.S. exercises sovereignty could lend support to such a charge.

The U.S. is obligated under Article 11 of the Trusteeship Agreement to provide citizenship of the Trust Territory to the territory's inhabitants. An outright grant of U.S. citizenship would not be compatible with this provision, nor would overly broad remedial action, like the proposed legislation, which, because of its treatment of these people as U.S. citizens for broad purposes, could be characterized as an extension of actual citizenship. However, limited remedial action granting benefits otherwise available only to U.S. citizens would be compatible. The Department therefore believes that more narrowly drawn remedial action designed to grant relief to Northern Marianas citizens by suspending statutory U.S. citizenship requirements, rather than by "deeming" them citizens for certain purposes, and doing so only on a case-by-case basis as needed to alleviate specific instances of hardship would be more consistent with our obligations under the Trusteeship Agreement. In fact, under section 1004 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands, the Executive has extended to Northern Mariana citizens certain federal statutory benefits otherwise restricted to U.S. citizens by suspending the U.S. citizenship requirement, and thereby avoiding conflict with the Trusteeship Agreement. For these reasons, we would welcome the opportunity to consider alternative, remedial legislative measures which take account of these considerations.

2/ The noncitizen U.S. nationality of Filipinos was terminated upon independence of the Philippines (July 4, 1946), and the allegiance of Filipinos was transferred to the new nation.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Powell A. Moore
Assistant Secretary for
Congressional Relations

II

97TH CONGRESS
2D SESSION

S. 2089

To clarify the applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9 (legislative day, JANUARY 25), 1982

Mr. McCLURE (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To clarify the applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Northern Mariana Islands shall not be considered a foreign country for purposes of subsection (k) of section 2680 of title 28, United States Code.

SEC. 2. This Act shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands.

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 10 1982

Honorable James A. McClure
Chairman, Committee on Energy and
  Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for a report on S. 2089, a bill "To clarify the applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands."

The Department of the Interior defers to the Department of Justice on S. 2089.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Pedro A. Sanjuan
ASSISTANT SECRETARY

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 10 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
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SEP 1[illegible] 1982

Honorable James A. McClure
Chairman
Committee on Energy and
  Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 2089, 97th Cong., 2d Sess., a bill "to clarify the applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands". We oppose enactment of this legislation.

Under existing law, the Federal Tort Claims Act (Act) does not apply to "any claims arising in a foreign country." 28 U.S.C. § 2680(k). This clause has been interpreted as limiting the coverage of the Act to the areas which are under sovereignty of the United States. United States v. Spelar, 338 U.S. 217, 219 (1949). The rationale for the foreign country exception is that Congress was unwilling "to subject the United States to liabilities depending upon the laws of a foreign power." Id. at 221. Another rationale for the exception may be found in the venue provision of 28 U.S.C. § 1402(b), pursuant to which a suit against the United States under the Act may be prosecuted only in the judicial district where the plaintiff resides or in which the act or omission occurred. Since there are, as a rule, no district courts outside the territory in which the United States is sovereign, this venue provision would have the effect of limiting the benefits of the Act to persons residing in the United States even if it were applicable to claims arising in a foreign country.

The Northern Mariana Islands are a part, although separately administered, of the Trust Territory of the Pacific Islands, over which the United States exercises jurisdiction, but not sovereignty. Article 3 of the Trusteeship Agreement with the Security Council of the United Nations, 61 Stat. (pt. 3) 3302. It was held as early as 1948 that the Act does not apply to Saipan, the main island of the Northern Mariana Islands. Brunell v. United States, 77 F. Supp. 68 (S.D.N.Y. 1948). In Callas v. United States, 253 F.2d 838 (2d Cir.

1958), the Second Circuit came to the same result with respect to the Marshall Islands, another part of the Trust Territory.

However, since Brunell and Callas, changes have occurred in the relationship between the United States and the Northern Mariana Islands which significantly affect the question of the applicability of the Act to the Northern Mariana Islands. In 1975, the United States and the Northern Mariana Islands concluded a covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. 90 Stat. 263, 48 U.S.C. 1681 note. This Covenant is not yet fully effective. The provision pursuant to which the United States will acquire sovereignty over the Northern Mariana Islands, and those provisions under which the citizens of the islands will acquire United States citizenship, will come into force only upon termination of the Trusteeship. That termination is likely to occur within the next few years. On the other hand, § 502(a) of the Covenant has extended most federal laws applicable to the Northern Mariana Islands as of January 9, 1978. */ Moreover, there is a federal district court in the Northern Mariana Islands which has the jurisdiction of a district court of the United States (48 U.S.C. § 1694a(a)) and, consequently, jurisdiction to maintain actions under the Act. Brandt v. United States, 110 F.Supp. 627, 628-29 (D. Guam 1953); Conception v. United States, 374 F.Supp. 1391, 1394 (D. Guam 1974). Hence, in their present transitional status, the Northern Mariana Islands are not the typical foreign country envisaged by 28 U.S.C. § 2680(k).

Above all, however, § 502b(a)(2) of the Covenant provides that all federal laws which are applicable to Guam and are of general applicability in the several States shall be applicable to the Northern Mariana Islands as they are applicable to the several States. Since the Act applies to Guam, see Brandt and Conception, supra, § 502(a)(2) has the effect of rendering the Act applicable to the Northern Mariana Islands as if it were a State rather than a foreign country. In Sablan Construction Company v. Government of the Trust Territory of the Pacific Islands, 526 F. Supp. 136, 138 n.8, (D.N.M.I. App. Div. 1981), the Appellate Division of the District Court for the Northern Mariana Islands suggested, without deciding the point, that Brunell, supra, which had held that the Northern Mariana Islands are a foreign country within the meaning of the Act, may, in view of § 502(a)(2), "not have survived the implementation of the Covenant."

The Department of Justice agrees with that interpretation of § 502(a)(2) of the Covenant, and will not interpose the foreign country exception of 28 U.S.C. § 2680(k) in any litigation involving claims under the Act which have arisen in the Northern Mariana Islands since January 9, 1978, or which will arise there in the future.

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*/ Section 1003(b) of the Covenant, 48 U.S.C. § 1681 note, and Proclamation No. 4534 of October 24, 1977, 48 U.S.C. § 1681 note.

In these circumstances, this legislation appears to be unnecessary. The Department of Justice therefore objects to it generally in the interests of legislative economy and specifically in the light of the Department's policy against piecemeal amendments of the Federal Tort Claims which affect only a small number of claims and which cover only a relatively short transitional period. */

We do, however, submit the following two comments in the event that Congress should decide to make the Act applicable to the Islands:

1. We recommend that provision be made for a cut-off date for claims in order to preclude the argument that the two year statute of limitations of 28 U.S.C. § 2401(b) began to run only when the remedy provided for by this bill became available. We therefore suggest that the following words be added at the end of § 1 of the bill: "with respect to claims which accrued no more than two years prior to the effective date of this Act."

2. We recommend the deletion of § 2 of the bill in view of the uncertainty it casts on the status of claims which have accrued, including even those pending in the courts, at the time of the establishment of the Commonwealth of the Northern Mariana Islands, i.e.. the time when the United States acquires sovereignty over those islands.

The Office of Management and Budget has advised the Department of Justice that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnell
Robert A. McConnell
Assistant Attorney General

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*/ To our knowledge, no claim under the Federal Tort Claims Act has been filed in the Northern Mariana Islands during the 4 1/4 years during which it became effective there by operation of § 502(a)(2) of the Covenant. This is probably due to the limited federal presence in the Northern Mariana Islands.

II

97TH CONGRESS
2D SESSION

S. 2090

To amend the application of the Clean Air Act to the Northern Mariana Islands.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9 (legislative day, JANUARY 25), 1982

Mr. MCCLURE (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend the application of the Clean Air Act to the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 301 of the Clean Air Act (42 U.S.C. 7601) is amended by adding a new subsection to read as follows:

"(d) The Administrator shall exempt the Northern Mariana Islands from any requirement imposed by this Act (or by regulations issued hereunder) on a finding by the Governor of the Northern Mariana Islands that the benefits of compliance with that requirement are to be significantly outweighed by the costs of compliance.".

SEC. 2. Subsection (d) of section 302 of the Clean Air Act (42 U.S.C. 7602(d)) is amended by adding ", except for purposes of part A of title II of this Act," before "the Commonwealth of the Northern Mariana Islands.".

○

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 10 1982

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your committee has requested the views of this Department on S. 2090, a bill 'To amend the application of the Clean Air Act to the Northern Mariana Islands."

The Department of the Interior defers to, and concurs with, the views of the Environmental Protection Agency with regard to S. 2090, including making the bill's provisions applicable to the Virgin Islands, Guam, and American Samoa, in addition to the Northern Mariana Islands.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Pedro A. Sanjuan
ASSISTANT SECRETARY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 21 1982

MAY 20 1982

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

OFFICE OF
NOISE AND RADIATION

ENERGY AND NATURAL RESOURCES
RECEIVED
MAY 24 1982
WASHINGTON, D.C. 20510

Dear Mr. Chairman:

Recently you requested the views of the U.S. Environmental Protection Agency on S. 2090, a bill to amend the application of the Clean Air Act to the Northern Mariana Islands.

We have reviewed the proposed legislation and, while we agree that it is appropriate to amend the Clean Air Act to provide a mechanism for relief for the Northern Mariana Islands, we feel the bill should be revised.

First, the bill would provide a mechanism for granting exemption of the Northern Mariana Islands from any provision of the Clean Air Act and it would, for purposes of part A of Title II of the Act, exclude the Northern Mariana Islands from the Act's definition of "State". We suggest, instead, an approach for the Northern Mariana Islands which would allow exemptions on a case-by-case basis to individual persons or sources or a class of persons or sources if such are deemed individually necessary and meet specified criteria.

Second, the bill does not require attainment and maintenance of national ambient air quality standards nor compliance with standards regulating hazardous air pollutants. Steady progress toward clean air as well as requirement of measures to ensure attainment of that goal should be maintained.

Third, the requirement of a cost-benefit test should not be the sole factor to be considered in making any decision that could affect air quality. S. 2090 would require the Administrator to apply only a cost-benefit test in reaching a decision on an exemption which may affect attainment or maintenance of national ambient air quality standards or compliance with regulations governing hazardous air pollutants. We believe that no exemptions should be granted from attainment or maintenance of national ambient air quality standards or compliance with regulations governing hazardous air pollutants. To the extent exemptions are granted from other statutory requirements, the Administrator should be allowed, in reaching a finding that compliance with the requirement at issue is impractical, unnecessary, or unreasonable, to consider factors such as geography, meteorology, economics or other local factors the Administrator deems significant.

Fourth, we suggest that the Administrator, before granting an exemption, be required to make an additional finding that alternative requirements enforceable under the Clean Air Act assure attainment and maintenance of the national ambient air quality standards and assure compliance with applicable emission standards for hazardous air pollutants.

Fifth, and finally, we suggest that the legislation provide that procedurally such a rule should be promulgated under Section 307(d) of the Clean Air Act and should be considered to be a final action of the Administrator for purposes of Section 307(b) of the Clean Air Act.

Thank you for the opportunity to review and comment on this proposed legislation. If we can be of further assistance, please call upon us.

Sincerely yours,

Kathleen M. Bennett
Assistant Administrator
for Air, Noise, and Radiation

II

97TH CONGRESS
2D SESSION

S. 2632

Authorizing the government of American Samoa to issue bonds and other obligations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16 (legislative day, JUNE 8), 1982

Mr. WEICKER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

Authorizing the government of American Samoa to issue bonds and other obligations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "American Samoa Bond Authorization Act of 1982".

SEC. 2. (a) The government of American Samoa, or its authority, may issue bonds and other obligations, payable solely from revenues derived from any improvement or undertaking.

(b) Bonds and other obligations under subsection (a) shall be issued pursuant to laws enacted by the government of American Samoa.

Sec. 3. Bonds and other obligations under section 2(a) shall be exempt from taxation by the Government of the United States, by the government of American Samoa and any political or municipal subdivision thereof, by any State, territory, and possession, by any county, municipality, and other municipal subdivision of any State, territory, and possession of the United States, and by the District of Columbia.

Sec. 4. Bonds and other obligations under section 2(a) shall not be a debt of the United States, nor shall the United States be liable thereon.

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Jim R

SEP 10 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
SEP 13 1982
WASHINGTON, D.C. 20510

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for a report on S. 2632, the "American Samoa Bond Authorization Act of 1982."

The Department of the Interior has no objection to the enactment of S. 2632 subject to the two conditions noted below regarding Fono endorsement, and the payment of interest.

S. 2632 would allow the American Samoa Government to issue tax-exempt industrial revenue bonds under conditions similar to those applicable to Puerto Rico. The Governor of American Samoa has endorsed the proposal.

Some officials in American Samoa have interpreted the constitution of American Samoa as prohibiting the issuance of bonds. The Secretary of the Interior has the authority to amend the constitution of American Samoa. But the exercise of that authority would have serious, negative implications for self-government in the territory.

While the Secretary could allow industrial revenue bonds to be authorized and issued, he has no authority to affect the tax status of the interest paid on such obligations. At present, however, section 103 of the Internal Revenue Code confers tax-exempt status on the interest paid on qualifying industrial revenue bonds. This statute applies to American Samoa. We note, however, that section 103 contains limitations, including the $1 million/$10 million limitation on capital expenditures and the prohibition against arbitrage.

We understand that American Samoa contemplates financing projects of a scope larger than would be allowed under the limitations of section 103. Enactment of S. 2632 would be necessary to accommodate the requirements of American Samoa. The Department of the Interior supports the legislative approach contained in S. 2632 on the following conditions: (1) that the Fono endorse the legislation prior to enactment, and (2) that the bill be amended as follows to make clear that the interest to be paid on the bonds or obligations is derived solely from the revenues of the improvement or undertaking:

> In section 2(a), after the word "obligations,", insert the words "the principal and interest of which are".

Legislation similar to section 2 of S. 2632 is applicable, at present, to Puerto Rico (see 48 U.S.C. 745).

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Pedro A. Sanjuan
ASSISTANT SECRETARY

97TH CONGRESS
2D SESSION

S. 2633

To amend the Organic Act of Guam and the Revised Organic Act of the Virgin Islands to transfer the audit authority and related staff of the offices of the government comptrollers for Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa to the Office of Inspector General, Department of the Interior, and for other related purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16 (legislative day, JUNE 8), 1982

Mr. WEICKER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the Organic Act of Guam and the Revised Organic Act of the Virgin Islands to transfer the audit authority and related staff of the offices of the government comptrollers for Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa to the Office of Inspector General, Department of the Interior, and for other related purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

GUAM

SECTION 1. The Organic Act of Guam (64 Stat. 384), as amended, is further amended—

(a) by deleting the first sentence of the sixth paragraph of section 6, as amended (82 Stat. 842, 843), and substituting the following: "The Governor shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress. The Governor shall also make such other reports at such other times as may be required by the Congress or under applicable Federal law. The Governor shall arrange for an independent audit of the comprehensive annual financial report in conformance with government auditing standards for governmental units as prescribed by the Comptroller General of the United States. He shall also submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken on Federal audit recommendations within sixty days after the issuance date of the audit report."; and

(b) by deleting section 9–A (82 Stat. 842, 845), as amended (91 Stat. 1159, 1161), in its entirety, and inserting in lieu thereof the following new section 9–A:

"SEC. 9–A. (a) The following functions, powers, and duties heretofore vested in the government comptroller for Guam are hereby transferred to the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the government of Guam:

"(1) The authority to audit all accounts pertaining to the revenue and receipts of the government of Guam, and of funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the government of Guam including those pertaining to trust funds held by the government of Guam.

"(2) The authority to report to the Secretary of the Interior and the Governor of Guam all failures to collect amounts due the government, and expenditures of funds or uses of property which are irregular or not pursuant to law.

"(b) The authority granted in paragraph (a) shall extend to all activities of the government of Guam, and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act of 1978 (92 Stat. 1101), as amended.

"(c) In order to carry out the provisions of this section, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the office of the government comptroller for Guam are hereby transferred to the Office of Inspector General, Department of the Interior.".

VIRGIN ISLANDS

SEC. 2. The Revised Organic Act of the Virgin Islands (68 Stat. 497), as amended, is further amended—

(a) by amending the fourth paragraph of section 11 (68 Stat. 503), as amended (82 Stat. 837, 838), to read: "The Governor shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress. The Governor shall also make such other reports at such other times as may be required by the Congress or under applicable Federal law. The Governor shall arrange for an independent audit of the comprehensive annual financial report in conformance with government auditing standards for governmental units as prescribed by the Comptroller General of the United States. He shall also submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken on Federal audit recommendations within sixty days after the issuance date of the audit report. He shall have the power to issue executive orders and regulations not in conflict with any applicable law. He may recommend bills to the legislature and give expression to his views on any matter before that body."; and

(b) by deleting section 17 (68 Stat. 505), as amended (72 Stat. 1094; 76 Stat. 43; 82 Stat. 840; 91 Stat. 1162), in its entirety, and inserting in lieu thereof the following new section 17:

"SEC. 17. (a) The following functions, powers, and duties heretofore vested in the government comptroller for the Virgin Islands are hereby transferred to the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the government of the Virgin Islands:

"(1) The authority to audit all accounts pertaining to the revenue and receipts of the government of the Virgin Islands, and of funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to trust funds held by the government of the Virgin Islands.

"(2) The authority to report to the Secretary of the Interior and the Governor of the Virgin Islands all failures to collect amounts due the government, and expenditures of funds or uses of property which are irregular or not pursuant to law.

"(b) The authority granted in paragraph (a) shall extend to all activities of the government of the Virgin Islands, and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act of 1978 (92 Stat. 1101), as amended.

"(c) In order to carry out the provisions of this section, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the office of the government comptroller for the Virgin Islands are hereby transferred to the Office of Inspector General, Department of the Interior.".

TRUST TERRITORY OF THE PACIFIC ISLANDS

SEC. 3. The Act of March 21, 1972 (86 Stat. 87), relating to the Trust Territory of the Pacific Islands is amended—

(a) by amending section 5 (86 Stat. 88), to read: "The chief executives of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands shall prepare, publish, and submit to the Congress, the Secretary of the Interior, and the High Commissioner of the Trust Territory of the Pacific Islands a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental

Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress. The chief executives shall also make such other reports at such other times as may be required by the Congress or under applicable Federal law. The chief executives shall arrange for an independent audit of the comprehensive annual financial report in conformance with government auditing standards for governmental units as prescribed by the Comptroller General of the United States. The chief executives shall submit to the Congress, the Secretary of the Interior, the High Commissioner of the Trust Territory of the Pacific Islands, and the cognizant Federal auditors a written statement of actions taken on Federal audit recommendations within sixty days after the issuance date of the audit report. This section is not subject to termination under section 502(a)(3) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (90 Stat. 263, 268).".

(b) by deleting section 4 of the Act of June 30, 1954 (68 Stat. 330), as amended (87 Stat. 354; 91 Stat. 1162; 94 Stat. 85), in its entirety, and inserting in lieu thereof the following new section 4:

"SEC. 4. (a) The following functions, powers, and duties heretofore vested in the government comptroller for Guam with respect to the government of the Trust Territory of the Pacific Islands and the government of the Northern Mariana Islands are hereby transferred to the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands:

"(1) The authority to audit all accounts pertaining to the revenue and receipts of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands, and of funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the aforementioned governments including those pertaining to trust funds held by such governments.

"(2) The authority to report to the Secretary of the Interior, the High Commissioner of the Trust Territory of the Pacific Islands, the chief executives of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands all failures to collect amounts due the governments, and expenditures of funds or uses of property which are irregular or not pursuant to law.

"(b) The authority granted in paragraph (a) shall extend to all activities of the governments of the Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands, and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act of 1978 (92 Stat. 1101), as amended. This section is not subject to termination under section 502(a)(3) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (90 Stat. 263, 268).

"(c) In order to carry out the provisions of this section, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the office of the government comptroller for Guam, with respect to the government of the Trust Territory of the Pacific Islands and the government of the Northern Mariana Islands are hereby transferred to the Office of Inspector General, Department of the Interior.".

(d) Section 201(a) of Public Law 96–205 (94 Stat. 85), is hereby deleted in its entirety.

AMERICAN SAMOA

SEC. 4. Section 501 of Public Law 96–205 (94 Stat. 90) is hereby deleted in its entirety, and inserted in lieu thereof is the following new section 501.

"SEC. 501. (a) The Governor of American Samoa shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council of Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress. The Governor shall also make such other reports at such other times as may be required by the Congress or under applicable Federal law. The Governor shall arrange for an independent audit of the comprehensive annual financial report in conformance with government auditing standards for governmental units as prescribed by the Comptroller General of the United States. He shall also submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken on Federal audit recommendations within sixty days after the issuance date of the audit report "(b) The following functions, powers, and duties heretofore vested in the government comptroller for American Samoa are hereby transferred to the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the government of American Samoa:

"(1) The authority to audit all accounts pertaining to the revenue and receipts of the government of American Samoa, and of funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the government of American Samoa including those pertaining to trust funds held by the government of American Samoa.

"(2) The authority to report to the Secretary of the Interior and the Governor of American Samoa all failures to collect amounts due the government, and expenditures of funds or uses of property which are irregular or not pursuant to law.

"(c) The authority granted in paragraph (b) shall extend to all activities of the government of American Samoa, and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act of 1978 (92 Stat. 1101), as amended.

"(d) In order to carry out the provisions of this section, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, to the government comptroller for American Samoa are hereby transferred to the Office of Inspector General, Department of the Interior.".

○

Jim Bierne

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES SEP 2 1982
RECEIVED
SEP 3 1982
WASHINGTON, D.C. 20510

Honorable James A. McClure
Chairman, Committee on Energy and
  Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your committee has requested the views of this Department on S. 2633, a bill "To amend the Organic Act of Guam and the Revised Organic Act of the Virgin Islands to transfer the audit authority and related staff of the offices of the government comptrollers for Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa to the Office of Inspector General, Department of the Interior, and for other related purposes."

We have no objection to the enactment of S. 2633 with the amendments recommended below.

Strengthening Comptroller Performance

Besides transferring the government comptrollers to the Inspector General, S. 2633 would (1) eliminate annual reports on territorial transactions by the Governors of the Virgin Islands and Guam, and on the Trust Territory Economic Development Loan Fund by the High Commissioner of the Trust Territory of the Pacific Islands, (2) eliminate annual reports by the government comptrollers on the fiscal condition of the territorial governments, (3) substitute for the reports noted above a single comprehensive annual financial report to be prepared, published, and submitted by the chief executive of the respective territory within 120 days after the close of the fiscal year, (4) require the chief executive of the respective territory to arrange for an internal audit of the comprehensive annual financial report, and (5) require the chief executive of the respective territory, within 60 days after the issuance of an audit report, to submit to the Congress, the Secretary of the Interior, and cognizant Federal auditors, a written statement of actions taken on Federal audit recommendations.

Substitution of the single comprehensive annual financial report for the chief executives' reports to the Secretary and the comptrollers' financial reports is a change that we expect would strengthen financial accountability in each of the territories with the implicit call for improved internal financial controls and management.

This change is consistent with the Department's goal of increasing self-government in the territories. In addition, by freeing the territorial comptrollers of their annual reporting task, comptroller personnel would be able to devote more time to performing their primary task of focusing audit efforts on specific problem areas. We support these changes in requirements and procedures.

Transfer of the Government Comptrollers

Existing law and regulation place the territorial government comptrollers under the general supervision of the Secretary of the Interior. Within the Department, they are under the jurisdiction of the Assistant Secretary for Territorial and International Affairs. To our knowledge, Interior officials, in their review of comptroller draft reports, have submitted comments relating to the tone of such reports, but have not sought to change substantive conclusions. As with past administrations, this policy continues to be the policy of the Assistant Secretary for Territorial and International Affairs.

The Department of the Interior has no objection to the transfer. In fact, we are already considering effecting some similar action administratively.

The structure of that transfer, however, governs whether or not the transfer can be accomplished administratively, or whether or not new legislation will be required. The Inspector General does not have the power, himself, under existing law, to examine local revenue and expenditures of territorial governments. If he is to be granted that power and the comptrollers were to be integrated into the overall Office of the Inspector General, legislation like S. 2633 would be necessary. If, however, the comptrollers were to remain in the territories with merely a change to Inspector General jurisdiction, existing law relating to the comptrollers and inspectors general would permit the transfer, without additional legislation.

Transferring the comptroller function to the Inspector General may increase career opportunities for comptroller personnel due to the fact that they would be a part of a larger audit organization. In addition, being a part of the Inspector General's office would enhance the prospects for coordination with other inspectors general.

Amendments

If Congress decides to enact provisions of S. 2633, we recommend two amendments.

It appears on page 6, in line 13, after the word "to" that the following language was inadvertently omitted: "the government of the Virgin Islands including those pertaining to". Without this language the Inspector General would be deprived of authority currently afforded the government comptroller to audit all local revenues and expenditures. The quoted language is included in provisions of the bill relating to Guam, the governments of the Trust Territory of the Pacific Islands, and American Samoa. For the sake of consistency and effective auditing, we recommend that the quoted language be inserted on page 6, as indicated above.

S. 2633 requires that the chief executives of the territorial governments submit written statements on actions taken regarding Federal audit recommendations within sixty days after the issuance of an audit report. Sixty days is often an insufficient period of time for implementing audit recommendations. While it is worthwhile to have an initial report within a sixty-day period, we believe that periodic reports thereafter, until the recommendations are implemented or resolved to the satisfaction of all interested parties, would strengthen audit compliance, and thereby improve the overall operations of the territorial governments. We recommend that the following amendment be included:

> Delete all those parts of the sentences that follow the word "taken" appearing on page 2, in line 24; on page 5, in line 14; on page 8, in line 15; and on page 11, in line 24; and in insert in lieu thereof the following language:
>
> > or contemplated on Federal audit recommendations within sixty days after the issuance of the audit report, and every sixty days thereafter, he shall submit a written statement of cummulative actions taken on Federal audit recommendations, until all audit recommendations are implemented or resolved.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Pedro Sanjuan

ASSISTANT SECRETARY

97TH CONGRESS
2D SESSION

S. 2729

To amend or repeal certain provisions of the Organic Acts applicable to the Virgin Islands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 14 (legislative day, JULY 12), 1982

Mr. WEICKER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend or repeal certain provisions of the Organic Acts applicable to the Virgin Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SEC. 101. In section 3 of the Revised Organic Act of the Virgin Islands, as amended (68 Stat. 4981; 48 U.S.C. 1561), the proviso in the next to the last paragraph is amended to read as follows: "*Provided*, That all offenses against the laws of the United States and the laws of the Virgin Islands which are prosecuted in the district court pursuant to section 22 (a) and (c) of this Act may be had by indictment by grand jury or by information, and that all offenses against the laws of the Virgin Islands which are prosecuted in the district court pursuant to section 22(b) of this Act or in the courts established by local law shall continue to be prosecuted by information, except such as may be required by local law to be prosecuted by indictment by grand jury.".

SEC. 102. Section 21 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1611) is amended to read as follows:

"SEC. 21. (a) The judicial power of the Virgin Islands shall be vested in a court of record designated the 'District Court of the Virgin Islands' established by Congress, and in such appellate court and lower local courts as may have been or may hereafter be established by local law.

"(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin Islands. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of the Virgin Islands by section 22 (a) and (c) of this Act.

"(c) The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.".

SEC. 103. (a) Section 22 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1612) is amended to read as follows:

"SEC. 22. (a) The District Court of the Virgin Islands shall have the jurisdiction of a district court of the United States, and, effective April 1, 1984, that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the laws relating to the income tax enacted by the legislature of the Virgin Islands.

"(b) In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not vested by local law in the local courts of the Virgin Islands: *Provided,* That the jurisdiction of the District Court of the Virgin Islands under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100 or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by local law for the purposes of determining the availability of indictment by grand jury or trial by jury.

"(c) The District Court of the Virgin Islands shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over those offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the District Court of the Virgin Islands has jurisdiction pursuant to subsections (a) and (b) of this subsection.".

(b) The provisions of this section shall not result in the loss of jurisdiction of the District Court of the Virgin Islands over any complaint or proceeding pending in it on the day preceding the effective date of this amendatory Act and such complaint and proceeding may be pursued to final determination in the District Court of the Virgin Islands, the United States Court of Appeals for the Third Circuit, and the Supreme Court, notwithstanding the provisions of this amendatory Act.

SEC. 104. Section 23 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1613) is amended to read as follows:

"SEC. 23. The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings: *Provided,* That for the first fifteen years following the establishment of the appellate court authorized by section 21(a) of this Act, the United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the highest court of the Virgin Islands from which a decision could be had in all cases involving the Constitution, treaties or laws of the United States, including this Act, or any authority exercised thereunder: *Provided further,* That the Court of Appeals for the Third Circuit shall not have jurisdiction of appeals in any cause involving only the laws enacted by the legislature of the Virgin Islands or the orders or regulations issued or actions taken by the executive branch of the government of the Virgin Islands unless the appeal involves the consistency of such laws, orders, regulations or actions with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this section.".

SEC. 105. The Revised Organic Act of the Virgin Islands is amended by adding to it a new section 23A:

"SEC. 23A. (a) Prior to the establishment of the appellate court authorized by section 21(a) of this Act, the judgments and orders of the courts established by local law may be reviewed in the appellate division of the district court to the extent now or hereafter prescribed by the legislature: *Provided,* That the legislature may not preclude the review of a judgment or order to the extent that it involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Virgin Islands or of any order or regulation issued or action taken by the executive branch of the government of the Virgin Islands with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

"(b) The appellate division of the district court shall consist of three judges, of whom two shall constitute a quorum. The chief judge of the district court shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court pursuant to section 24(a) of this Act: *Provided*, That only one of them shall be a judge of a court established by local law. The concurrence of two judges shall be necessary to any decision by the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the appellate division of the district court involving the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder: *Provided*, That the Court of Appeals for the Third Circuit shall not have jurisdiction of appeals in any cause involving only the laws enacted by the legislature of the Virgin Islands or the orders or regulations issued or actions taken by the executive branch of the government of the Virgin Islands unless the appeal involves the consistency of such laws, orders, regulations or actions with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"(d) The provisions of subsection (c) limiting the appellate review of the court of appeals to decisions involving Federal questions shall not apply to any appeal or other method of review from the decisions of any court established by local law pending on the effective date of this Act in the District Court of the Virgin Islands, the United States Court of Appeals for the Third Circuit, or the Supreme Court of the United States.

"(e) Upon the establishment of the appellate court provided for in section 21(a) of this Act all appeals from the decisions of the courts of the Virgin Islands established by local law not previously taken must be taken to that appellate court. The establishment of the appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division on such appeals may be reviewed in the United States Court of Appeals for the Third Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.".

SEC. 106. (a) Section 24(a) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(a)) is amended to read as follows:

"(a) The President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for terms of ten years and until their successors are chosen and qualified, unless sooner removed by the President for cause. The judge of the district court who is senior in continuous service and who otherwise qualifies under section 136(a) of title 28, United States Code, shall be the chief judge of the court. The salary of a judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the district court, the chief judge of the Third Judicial Circuit of the United States may assign a judge of a court of record of the Virgin Islands established by local law, or a circuit or district judge of the Third Judicial Circuit, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judges of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States.".

(b) Section 24(b) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(b)) is amended to read as follows:

"(b) Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provisions of rule 7(a) and of rule 54(a) of the Federal Rules of Criminal Procedure relating to the requirement of indictment and to the prosecution of criminal offenses in the Virgin Islands by information, respectively, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, and 28, United States Code, shall apply to the district court and appeals therefrom: *Provided,* That in the district court all criminal prosecutions under the laws of the United States and all criminal prosecutions under local law under section 22(c) of this Act may be had by indictment by grand jury or by information: *Provided further,* That an offense which has been investigated by or presented to a grand jury may be prosecuted by information only by leave of court or with the consent of the defendant. All criminal prosecutions arising under local law which are tried in the district court pursuant to section 22(b) of this Act shall continue to be had by information, except such as may be required by the local law to be prosecuted by indictment by grand jury.".

SEC. 107. Section 25 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1615) is amended to read as follows:

"SEC. 25. The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. Court for the Division of Saint Croix shall be held in Christiansted, and for the Division of Saint Thomas and Saint John at Charlotte Amalie.".

SEC. 108. Section 27 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1617) is amended by substituting the words "courts established by local law" for "inferior courts of the Virgin Islands" wherever they appear, and by deleting the last two sentences.

SEC. 109. Section 4(d) of the Organic Act of the Virgin Islands of June 22, 1936 (49 Stat. 1808, 48 U.S.C. 1405c(d)), is amended by substituting the word "legislature" for the words "legislative assembly" wherever they appear.

SEC. 110. The following provisions of the Organic Act of the Virgin Islands of June 22, 1936, as amended, are repealed: Section 2 (49 Stat. 1807; 48 U.S.C. 1405a); section 3 (49 Stat. 1807; 48 U.S.C. 1405b); section 5 (49 Stat. 1808; 48 U.S.C. 1405d); section 6 (49 Stat. 1808; 48 U.S.C. 1405e); section 7 (49 Stat. 1808; 48 U.S.C. 1405f); section 8 (49 Stat. 1809; 48 U.S.C. 1405g); section 11 (49 Stat. 1809; 48 U.S.C. 1405j); section 12 (49 Stat. 1809; 48 U.S.C. 1405k); section 13 (49 Stat. 1810; 48 U.S.C. 1405l); section 14 (49 Stat. 1810; 48 U.S.C. 1405m); section 15 (49 Stat. 1810; 48 U.S.C. 1405n); section 16 (49 Stat. 1810; 48 U.S.C. 1405o); section 17 (49 Stat. 1811; 48 U.S.C. 1405p); section 18 (49 Stat. 1811, 48 U.S.C. 1405q) section 19 (49 Stat. 1811; 48 U.S.C. 1405r); section 22 (49 Stat. 1812; 48 U.S.C. 1405u); section 23 (49 Stat. 1813; 48 U.S.C. 1405v); section 24 (49 Stat. 1813; 48 U.S.C. 1405w); section 25 (49 Stat. 1813; 48 U.S.C. 1405x); section 27 (49 Stat. 1813; 48 U.S.C. 1405z); section 28 (49 Stat. 1814; 48 U.S.C. 1406); section 29 (49 Stat. 1814; 48 U.S.C. 1406a); section 30 (49 Stat. 1814; 48 U.S.C. 1406b); section 31 (49 Stat. 1814; 48 U.S.C. 1406c); section 32 (49 Stat. 1814; 48 U.S.C. 1406d);

section 33 (49 Stat. 1815; 48 U.S.C. 1406e); section 34 (49 Stat. 1815; 48 U.S.C. 1406g); and section 39 (49 Stat. 1817; 48 U.S.C. 1406k).

SEC. 111. The following statutes are repealed:

(a) Section 2 (39 Stat. 1132; 48 U.S.C. 1392) of the Act of March 3, 1917, as amended;

(b) That portion of section 1 of the Naval Service Appropriation Act, 1922, of July 12, 1921 (42 Stat. 123; 48 U.S.C. 1393), which reads: "That no person owing allegiance to any country other than the United States of America shall be eligible to hold office as a member of the colonial councils of the Virgin Islands of the United States nor to hold any public office under the government of said islands: *Provided further,*";

(c) Section 8 of the Act of July 3, 1930, (46 Stat. 948) as amended by section 1 of the Act of July 1, 1932 (47 Stat. 565; 48 U.S.C. 1399);

(d) The Act of May 20, 1932 (47 Stat. 160; 48 U.S.C. 1400);

(e) Section 2 of the Act of July 1, 1932 (47 Stat. 565; 48 U.S.C. 1392b);

(f) The Act of December 20, 1944, as amended (58 Stat. 827; 48 U.S.C. 1409 to 1409j);

(g) The Act of June 30, 1949, as amended (63 Stat. 350; 48 U.S.C. 1407 to 1407i): *Provided,* That nothing in this subsection shall affect the pension rights of former employees of the Virgin Islands Corporation;

(h) The Act of October 29, 1951 (65 Stat. 661; 48 U.S.C. 1409m through 1409o); and

(i) Section 4 of the Act of August 19, 1976 (90 Stat. 1195; 48 U.S.C. 1574d).

TITLE II

SEC. 201. Section 22 of the Organic Act of Guam (64 Stat. 389; 48 U.S.C. 1424), as amended, is amended to read as follows:

"SEC. 22. (a) The judicial authority of Guam shall be vested in a court of record established by Congress, designated the "District Court of Guam," and such local court or courts as may have been or shall hereafter be established by the laws of Guam in conformity with section 22A of this Act.

"(b) The District Court of Guam shall have the jurisdiction of a district court of the United States and, effective April 1, 1984, that of a bankruptcy court of the United States.

"(c) In addition to the jurisdiction described in subsection (b) the District Court of Guam shall have original jurisdiction in all other causes in Guam, jurisdition over which has not been vested by the legislature in another court or other courts established by it. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by the laws of Guam for the purpose of determining the requirements of indictment by grand jury or trial by jury.

"(d) The District Court of Guam shall have the appellate jurisdiction provided for in section 22C of this Act.

"SEC. 22A. (a) The local courts of Guam shall consist of such trial court or courts as may have been or may hereafter be established by the laws of Guam. On or after January 1, 1983, the legislature of Guam may in its discretion establish an appellate court.

"(b) The legislature may vest in the local courts jurisdiction over all causes in Guam. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam by section 22(b) of this Act.

"(c) The practice and procedure in the local courts and the qualifications and duties of the judges thereof shall be governed by the laws of Guam and the rules of those courts.

"SEC. 22B. The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings: *Provided,* That for the first fifteen years following the establishment of the appellate court authorized by section 22A(a) of this Act, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the highest court of Guam from which a decision could be had in all cases involving the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder: *Provided further,* That the court of appeals shall not have jurisdiction of appeals in any cause of involving only the laws enacted by the legislature of Guam or the orders or regulations issued or actions taken by the executive branch of the government of Guam unless the appeal involves the consistency of such laws, orders, regulations or actions with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"SEC. 22C. (a) Prior to the establishment of the appellate court authorized by section 22A(a) of this Act the judgments and orders of the local courts of Guam may be reviewed in the Appellate Division of the District Court to the extent now or hereafter prescribed by local law: *Provided,* That local law may not preclude the review of a judgment or order to the extent that it involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of Guam or of any orders or regulations issued or actions taken by the executive branch of the government of Guam with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

"(b) The Appellate Division of the District Court shall consist of three judges, of whom two shall constitute a quorum. The district judge shall be the presiding judge of the appellate division and shall preside there unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time pursuant to section 24 of this Act: *Provided,* That only one of them shall be a judge of a local court of Guam. The concurrence of two judges shall be necessary to any decision by the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division involving the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder: *Provided*, That the court of appeals shall not have jurisdiction of appeals in any cause involving only the laws enacted by the legislature of Guam or the orders or regulations issued or actions taken by the executive branch of the government of Guam unless the appeal involves the consistency of such laws, orders, regulations or actions with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection. The provisions of this subsection, limiting the appellate review of the court of appeals to decisions involving Federal questions, shall not apply to any appeal or other method of review from the decisions of the local courts of Guam pending on the effective date of this Act in the District Court of Guam, the United States Court of Appeals for the Ninth Circuit or the Supreme Court of the United States.

"(d) Upon the establishment of the appellate court provided for in section 22A(a) of this Act all appeals from the decisions of the local courts not previously taken must be taken to the appellate court. The establishment of that appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division on such appeals may be reviewed in the United States Court of Appeals for the Ninth Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.

"SEC. 22D. Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provision in Rule 54(a) Federal Rules of Criminal Procedure relating to the prosecution of criminal offenses on Guam by information, the rules of practice and procedure heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, and 28, United States Code, shall apply to the District Court of Guam and appeals therefrom; except that the terms 'attorney for the government' and 'United States attorney', as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, mean the attorney general of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.".

SEC. 202. Section 24 of the Organic Act of Guam, as amended (64 Stat. 390; 48 U.S.C. 1424b), is amended, by:

(a) by substituting in the first paragraph of subsection (a) the words "for the term of ten years" for "for a term of eight years";

(b) substituting in the second paragraph of subsection (a) the words "a local court of record" for "the Island Court of Guam";

(c) substituting in subsection (b) the numbers "35" and "37" for "31" and "33", respectively; and

(d) deleting subsection (c).

SEC. 203. Section 1 of the Act of August 27, 1954 (68 Stat. 882), is amended by repealing that portion which reads: "that no provisions of any such rules which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Guam unless and until made so applicable by laws enacted by the Legislature of Guam, and except further".

TITLE III

SEC. 301. Section 1(b)(1) of the Act of November 8, 1977 (91 Stat. 1265; 48 U.S.C. 1694(b)(1)), is amended by substituting the words "for the term of ten years" for "for the term of eight years".

SEC. 302. Section 2(a) of the Act of November 8, 1977 (91 Stat. 1266; 48 U.S.C. 1694a(a)), is amended to read as follows:

"(a) The District Court for the Northern Mariana Islands shall have the jurisdiction of a district court of the United States, and, effective April 1, 1984, that of a bankruptcy court of the United States, except that the jurisdiction of the district court with respect to the government of the Trust Territory of the Pacific Islands or its agencies or instrumentalities shall be limited (a) to actions brought by that government or its agencies or instrumentalities, (b) to actions brought against that government or its agencies or instrumentalities based upon a commercial activity carried on by that government or its agencies or instrumentalities within the Northern Mariana Islands, and (c) to actions in which money damages are sought against that government or its agencies or instrumentalities for personal injury or death, or damage to or loss of property, occurring in the Northern Mariana Islands and caused by the tortious act or omission of that government or its agencies or instrumentalities, or of any official or employee thereof while acting within the scope of his office or employment, except any claim based upon the exercise or failure to exercise a discretionary function, regardless of whether the discretion be abused, or any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights. In any suit by or against the government of the trust territory or its agencies or instrumentalities permissible under this section, that government or its agencies or instrumentalities shall be entitled to such rights and privileges as are applicable to the United States when it is a party. The district court shall have no jurisdiction over actions brought against the officers or employees of that government or its agencies or instrumentalities with respect to their acts or omissions colorably related to their official duties.".

SEC. 303. Section 3 of the Act of November 8, 1977 (91 Stat. 1266; 48 U.S.C. 1694b) is amended to read as follows:

"SEC. 3. (a) Prior to the establishment of an appellate court for the Northern Mariana Islands the district court shall have such appellate jurisdiction over the judgments and orders of the courts established by the Constitution or laws of the Northern Mariana Islands as the Constitution and laws of the Northern Mariana Islands provide, except that such Constitution and laws may not preclude the review of a judgment or order to the extent that it involves the Constitution, treaties, or laws of the United States, including the covenant to establish a Commonwealth of the Northern Mariana Islands in political union with the United States of America (covenant), or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Northern Mariana Islands or of any orders or regulations issued or actions taken by the executive branch of the government of the Northern Mariana Islands with the Constitution, treaties, or laws of the United States, including the covenant, or any authority exercised thereunder by an officer or agency of the United States.

"(b) Appeals to the district court shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to section 1(b)(2) of this Act: *Provided,* That only one of them shall be a judge of a court of record of the Northern Mariana Islands. The concurrence of two judges shall be necessary to any decision by the district court on the merits of an appeal but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division involving the Constitution, treaties, or laws of the United States, including the covenant, or any authority exercised thereunder: *Provided,* That the Court of Appeals for the Ninth Circuit shall not have jurisdiction of appeals in any cause involving only the Constitution and laws of the Northern Mariana Islands or the order or regulations issued or actions taken by the executive branch of the government of the Northern Mariana Islands unless the appeal involves the consistency of such laws, orders, regulations or actions with the Constitution, treaties, or laws of the United States, including the covenant, or any authority exercised thereunder by an officer or agency of the Government of the United States. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection. The provisions of this subsection, limiting the appellate review of the Court of Appeals to decisions involving Federal questions, shall not apply to any appeal or other method of review from the decisions of the local courts of Northern Mariana Islands pending on the effective date of this Act in the District Court of the Northern Mariana Islands, the United

States Court of Appeals for the Ninth Circuit or the Supreme Court of the United States.".

TITLE IV

SEC. 401. Sections 335, 336, and 402(e) of the Act of November 6, 1978 (92 Stat. 2680, 2682), are repealed.

SEC. 402. This Act shall become effective on the first day of the third month following its enactment.

○

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Jim B.

SEP 10 1982

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
RECEIVED
SEP 13 1982
WASHINGTON, D.C. 20510

Dear Mr. Chairman:

Your committee has requested the views of this Department on S. 2729, a bill "To amend or repeal certain provisions of the Organic Acts applicable to the Virgin Islands, and for other purposes."

We support the bill and recommend that it be enacted with the amendment outlined below.

S. 2729 would (1) reform Federal judicial provisions applicable to the Virgin Islands and Guam to provide for an improved process of appellate review, (2) modify the jurisdiction of the Federal District Court for the Northern Mariana Islands, and (3) repeal a number of provisions of Federal law applicable to the Virgin Islands that have been superseded by subsequent enactments, but never repealed.

The bill is the result of a drafting service provided Senator Weicker by the Department of Justice and the Department of the Interior. A copy of the section-by-section analysis of the bill is enclosed for your reference.

Recommended Amendment

Section 302 of S. 2729 excludes from the jurisdiction of the District Court for the Northern Mariana Islands (1) all matters concerning the government of the Trust Territory of the Pacific Islands, except certain specifically enumerated actions, and (2) acts or omissions of Trust Territory officers and employees colorably related to their official duties. Neither the drafting service nor S. 2729 places these excluded items under the jurisdiction of any other court. Under Northern Mariana Islands Public Law No. 3-14 the Commonwealth Trial Court has been given jurisdiction over many civil and criminal actions, and, on and after January 10, 1983, will be given jurisdiction over all civil and criminal actions arising under the laws of the Commonwealth of the Northern Mariana Islands. It is possible that some matters that would be excluded from District Court jurisdiction under section 302 could be interpreted as being susceptible to the jurisdiction of the Commonwealth Trial Court. In order to avoid confusion, we suggest that the High Court of the Trust Territory of the Pacific Islands be given jurisdiction over the matters in question.

Recommendation: Renumber sections 401 and 402 as sections 402 and 403, respectively, and insert the following new section on page 27, in the line following "TITLE IV":

> Sec. 401. Except for those matters placed within the jurisdiction of the District Court for the Northern Mariana Islands by section 302(a) of this Act, the High Court of the Trust Territory of the Pacific Islands shall have jurisdiction over matters regarding the government of the Trust Territory of the Pacific Islands, or its agencies, instrumentalities, officers or employees.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Pedro A. Sanjuan
ASSISTANT SECRETARY

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 10, 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
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[illegible]

Honorable James A. McClure
Chairman
Senate Committee on Energy
  and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 2729, 97th Cong., 2d Session, a bill "To amend or repeal certain provisions of the Organic Acts applicable to the Virgin Islands, and for other purposes."

The bill is based on a drafting service submitted to your Committee jointly by the Department of the Interior and the Department of Justice. This draft was supported by the attached Explanation and Section-by-Section Analysis. Those two documents represent the views of the Department of Justice with respect to this legislation. We shall, of course, be pleased to comment on any specific question which you may have now or which may arise in the future.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Attachment

Draft 7/1/82

Explanation of the Bill
and
Section by Section Analysis

Title I

Section 101. This section amends § 3 of the Revised Organic Act of the Virgin Islands of 1954 (Act), 48 U.S.C. § 1561, by authorizing the prosecution by indictment or by information of violations of the laws of the United States and of certain local offenses closely related to such violations. It is designed to face the problem presented by United States v. Christian, 660 F.2d 892 (3rd Cir. 1981), which held that existing law precludes the impanelling of a federal grand jury for the investigation of violations of federal laws in the Virgin Islands.

Section 102. This section amends § 21 of the Act, 48 U.S.C. § 1611, by authorizing the establishment of a local appellate court. It also authorizes the legislature of the Virgin Islands to vest in the local courts jurisdiction over all causes in the Virgin Islands. That jurisdiction, however, is subject to the exclusive or concurrent jurisdiction of the district court provided for in § 22(a) and (c). The procedure in the local courts is to be governed by local law.

Section 103. (a) Section 103(a) amends §§ 22 and 23 of the Act, 48 U.S.C. §§ 1612, 1613. Section 22(a) confers on the district court of the Virgin Islands the full jurisdiction of a district court of the United States and not only the federal question jurisdiction. See Chase Manhattan Bank (N.A.) v. South Acres Development Co., 434 U.S. 236 (1978). The redraft of § 22(a) takes account (a) of the amendment of 28 U.S.C. § 1331, which has eliminated the jurisdictional amount in the federal question jurisdiction of the district courts, and (b) of the amendment of § 22(a) by §§ 336(a) and 402(e) of the Bankruptcy Reform Act of 1978, 92 Stat. 2680, 2682, which conferred on the District Court of the Virgin Islands the jurisdiction of a bankruptcy court of the United States, effective April 1, 1984. In analogy to § 31 of the Organic Act of Guam, 48 U.S.C. § 1421i(h), the district court will also have exclusive jurisdiction in all proceedings under the income tax laws applicable to the Virgin Islands, except certain ancillary laws enacted by the legislature of the Virgin Islands. This provision results from the characterization of the income tax laws of the Virgin Islands as a local territorial tax which is reviewable in the district court only by virtue of local legislation. Dudley v. Commissioner of Internal Revenue, 258 F.2d 182 (3rd Cir. 1958).

Section 22(b) confers on the district court jurisdiction over those local causes over which jurisdiction has not been vested by local law in the local courts. In contrast to existing law (§ 24 of the Act) the district court will have concurrent jurisdiction with the local courts over the causes vested in the latter by local law only where specifically provided for by federal law, e.g. in diversity cases or in causes in which a federal question arises. Jurisdiction over petty causes, as defined in that subsection, is basically conferred on the local courts. Again, the district court has jurisdiction over those causes where specifically provided by federal law, e.g., where they involve a federal question within the meaning of 28 U.S.C. § 1331.

Section 22(c) confers on the district court concurrent jurisdiction over offenses of which the local courts have jurisdiction, if those offenses are closely related to offenses over which the district court has jurisdiction. The purpose of this provision is to obviate the need of trying in different courts separate aspects of the same offense or of closely related offenses.

(b) Section 103(b) takes account of the loss of the district courts' general concurrent jurisdiction over local causes transferred by local law to the local courts, and continues the jurisdiction of the federal courts over the local causes pending in the federal trial and appellate courts on the effective date of this Act.

Section 104. This section replaces § 23 of the Act, 48 U.S.C. § 1613. It provides generally that the relations between the local courts of the Virgin Islands and the federal courts shall be the same as the relation between the state courts and the federal courts, with exception that for the first fifteen years following the establishment of the appellate court, the decisions of the highest local court from which a decision may be had shall be reviewable in the United States Court of Appeals for the Third Circuit, rather than in the Supreme Court pursuant to 28 U.S.C. § 1257.

The transitional period of fifteen years is the same as the one provided for in § 4 of the Act of November 8, 1977, 48 U.S.C. § 1694c, relating to the Northern Mariana Islands. It is based on the consideration that, during the formative years of the new appellate court and while it establishes its institutional traditions, its decisions should be reviewed as a matter of right by a court of appeals which is familiar with the local conditions rather than on a discretionary basis by the Supreme Court.

As in the case of the relationship between federal and State courts, the review of the decisions of the appellate court is limited to federal questions to the exclusion of purely local issues, i.e. to appeals involving the Constitution, treaties and laws United States or any authority exercised thereunder. The section has been drafted (a) to obviate the contention that every act of the legislative or executive branch of a territorial government raises a federal question because all such acts derive their authority from federal law, in particular the Organic Act, and (b) to assure the reviewability in the Court of Appeals of local actions which are in conflict with the Constitution of the United States, federal statutes, including the Organic Act, and the acts of federal officials authorized by federal law. See in this context Taisacan v. Camacho, 660 F.2d 411, 413 (9th Cir. 1981) and Camacho v. Civil Service Commission, 666 F.2d 1257, 1261-1262 (9th Cir. 1982).

Section 105. This section adds a new § 23A to the Act. It amplifies the last sentence of § 22 of the Act, 48 U.S.C. 1612, relating to the appellate jurisdiction of the district court over the decisions of the local courts. Section 23A provides that prior to the establishment of the appellate court authorized by § 21(a), the decisions of the local courts shall be reviewable in the appellate division of the district court, as provided by the local legislature. The latter, however, may not preclude appeals to the appellate division from decisions of the local courts involving federal questions.1/ The appellate division consists of three judges as on Guam and in the Northern Mariana Islands (see 48 U.S.C. §§ 1424

1/ For the discussion of the federal question concept in a territory see the analysis of § 104, supra.

and 1694b, respectively). This provision responds to complaints by representatives of the Virgin Islands that at present the decisions of the local courts are reviewed by a single district judge. Following the precedent of § 3 of the Act of November 8, 1977, 48 U.S.C. § 1694b, applicable to the Northern Mariana Islands, § 23A(b) provides that no more than one judge of a court established by local law may be a judge of the appellate division. This provision was included in the 1977 Act at the insistence of Members of Congress who apparently felt that it would be undesirable to have a majority in the appellate division consist of judges who are members of the very court the decision of which was being reviewed.

In contrast to existing law only those decisions of the appellate division which involve federal questions 2/ may be reviewed in the Court of Appeals for the Third Circuit. This provision is based on the consideration that the courts of appeals should not be burdened with the review of purely local issues, especially where the litigants already had been affaorded one stage of appellate review.

Section 106. This section deals with the substance of § 24(a) and (b) of the Act, 48 U.S.C. 1614(a) and (b), and the last two sentences of § 25 of the Acts, 48 U.S.C. § 1615.

Section 106(a) amends § 24(a) of the Act by providing that the district judges shall be appointed for terms of ten years. Under existing law, the district judges of the territorial courts are appointed for terms of eight years. They become, however, eligible for retirement benefits only after ten years of service. 28 U.S.C. § 373. The purpose of the change is to avoid the hardship which 28 U.S.C. § 373 imposes on district judges who fail of reappointment after their first term. The redraft of § 24(a) incorporates by reference the amendment of 28 U.S.C. § 136(a), relating to the appointment of the chief judges of the district courts by § 202 of the Federal Courts Improvement Act of April 2, 1982, 96 Stat. 52.

Section 106(b) replaces § 24(b) of the Act. It expands the scope of the next to the last sentence of § 25 of the Act by extending to the Virgin Islands "where appropriate" the procedural provisions of title 18, and title 28, United

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2/ For the discussion of the federal question concept in a territory see the analysis of § 104, supra.

States Code, and the rules of procedures adopted or promulgated pursuant to titles 11, 18 and 28, United States Code. At present some of those procedural provisions are expressly applicable to the Virgin Islands in a haphazard manner, leaving it open whether and to what extent other provisions also apply to the Virgin Islands. It is envisaged that the only exceptions to this extension will be those provisions which are in conflict with specific legislation applicable to the Virgin Islands and those relating to judges who are appointed during good behavior.

The two provisos of § 24(b) implement the amendment of § 3 of the Act by § 101 of this legislation. They provide (a) that federal offenses, and local offenses coming within the scope of § 22(c), may be prosecuted by indictment by grand jury or by information, and (b) that once a matter has been before a grand jury it may be prosecuted by information only by leave of court or with the consent of the defendant.

Section 107. This section amends § 25 of the Act, 48 U.S.C. 1615. It generally restates the first sentence of that section. The subject matter of the second sentence relating to the sessions of the court has been omitted since it is covered by 28 U.S.C. § 139, rendered applicable to the District Court of the Virgin Islands, by § 24(b). The subject matter of the last two sentences has been transferred to § 24(b).

Section 108. This section amends § 27 of the Act, 48 U.S.C. § 1617, by substituting the words "courts established by local law" used in this legislation for the term "inferior courts of the Virgin Islands" used in the Act. It also repeals the last two sentences of § 27 because they duplicate 28 U.S.C. § 546, which has been made applicable to the Virgin Islands by the amendment of § 24(b) and by the first sentence of § 27.

Section 109. This section amends § 4(d) of the Organic Act of the Virgin Islands of June 22, 1936, 48 U.S.C. 1405c(d), by substituting the current term "legislature" for "legislative assembly" used in 1936 Act.

Section 110. This section repeals those provisions of the Organic Act of the Virgin Islands of 1936 which have become obsolete or been by or replaced by subsequent legislation.

Provisions of Organic Act of 1936	Obsolete or replaced by:
§ 2. 48 U.S.C. § 1405a	obsolete
§ 3, 48 U.S.C. § 1405b	obsolete
§ 5, 48 U.S.C. § 1405d	obsolete
§ 6, 48 U.S.C. § 1405e	obsolete
§ 7, 48 U.S.C. § 1405f	obsolete
§ 8, 48 U.S.C. § 1405g	obsolete
§ 11, 48 U.S.C. § 1405j	obsolete
§ 12, 48 U.S.C. § 1405k	obsolete
§ 13, 48 U.S.C. § 1405l	obsolete
§ 14, 48 U.S.C. § 1405m	obsolete
§ 15, 48 U.S.C. § 1405n	obsolete
§ 16, 48 U.S.C. § 1405o	obsolete
§ 17, 48 U.S.C. § 1405p	Replaced by § 4 of the Act, 48 U.S.C § 1542,
§ 18, 48 U.S.C. § 1405o	Replaced by § 8(c) of the Act, 48 U.S.C. 1574(c),
§ 19, 48 U.S.C. § 1405r	Replaced by § 8(a) of the Act, 48 U.S.C. 1574(a),
§ 22, 48 U.S.C. § 1405u	obsolete
§ 23, 48 U.S.C. § 1405v	obsolete
§ 24, 48 U.S.C. § 1405w	obsolete
§ 25, 48 U.S.C. § 1405x	Replaced by §§ 21 to 23 of the Act, 48 U.S.C. § 1611,
§ 27, 48 U.S.C. § 1405z	Replaced by § 25 of the Act, 48 U.S.C. § 1615,
§ 28, 48 U.S.C. § 1406	Replaced by §§ 22, 23 of the Act, 48 U.S.C. §§ 1612, 1613,
§ 29, 48 U.S.C. § 1406a	Replaced by 18 U.S.C. § 3241,
§ 30, 48 U.S.C. § 1406b	Superseded by 28 U.S.C. §§ 1291, 1294(3),
§ 31, U.S.C. § 1406c	Replaced by § 26 of the Act, 48 U.S.C. § 1616,
§ 32, 48 U.S.C. § 1406d	Replaced by § 23 of the Act, 48 U.S.C. § 1613,
§ 33, 48 U.S.C. § 1406e	obsolete

§ 34, 48 U.S.C. § 1406g	Replaced by § 3 of the Act, 48 U.S.C. § 1561,
§ 39, 48 U.S.C. § 1406k	Replaced by § 30 of the Act, § 1544.

Section 111. This section repeals provisions of earlier legislation which have been replaced by subsequent legislation or which have become obsolete:

(a) Section 2 of the Act of March 3, 1917. This section was replaced first by § 18 of the Organic Act of 1936, 48 U.S.C. § 1405q, and is now incorporated in § 8(c) of the Act, 48 U.S.C. § 1574(c). The fiscal provisions of §§ 3, 4, and 5 of the Act of March 3, 1917, 48 U.S.C. §§ 1394, 1395, 1396, and of §§ 35, 36 of the Act, 48 U.S.C. §§ 1406h and 1406i, have not been repealed or amended, because their mutual relationship and the impact on them of § 28(a) and (d) of the Act, 48 U.S.C. § 1642, 1642, and of General Head note 3(a) of the Tariff Schedules of the United States, 19 U.S.C. § 1202, are uncertain and will have to be resolved in separate legislation.

(b) This portion of § 1 of the Naval Appropriation Act of 1921 (48 U.S.C. § 1393) has been replaced by § 29 of the Act, 48 U.S.C. § 1543.

(c) The subject matter of Section 8 of the Act of July 1, 1930, as amended, 48 U.S.C. § 1399, is included in § 4(b) of the Organic Act of 1936, 48 U.S.C. § 1405c(b).

(d) The Act of May 20, 1932, 48 U.S.C. § 1400, will be superseded as the result of the amendment of § 22(a) of the Act, 48 U.S.C. § 1612(a), by § 103(a) of this legislation, conferring the full jurisdiction of a district court of the United States on the District Court for the Virgin Islands.

(e) Section 2 of Act of July 1, 1932, 48 U.S.C. § 1392b, same as (d).

(f) The projects authorized by the Act of December 20, 1944; as amended, 48 U.S.C. §§ 48 U.S.C. §§ 1409 to 1409j appear to have been completed.

(g) The Virgin Islands Corporation created by the Act of June 30, 1949, 48 U.S.C. §§ 1407 to 1407i, was dissolved on July 1, 1966.

(h) The agricultural research and extension service programs for the Virgin Islands, authorized by the Act of October 1, 1951, 48 U.S.C. § 1409 m through o, are now carried out under the corresponding federal statutes of general application which have been extended to the Virgin Islands by § 506(h) and (k) of the Education Amendments of 1972, 86 Stat. 351.

(i) The grants provided for in § 4 of the Act of August 19, 1976, 90 Stat. 1195, have been expended.

Title II

Section 201. This section restates and amplifies § 22 of the Organic Act of Guam (Act), 48 U.S.C. § 1424.

Section 22(a) restates the first sentence of § 22(a) of the Act, 48 U.S.C. § 1424(a).

Section 22(b) deals with the first clause of the second sentence of § 22(a) of the Act, 48 U.S.C. § 1424(a). It confers on the district court of Guam the full jurisdiction of a district court of a United States and not only federal question jurisdiction. See Chase Manhattan Bank (N.A.) v. South Acres Development Co. 434 U.S. 236 (1978). Section 22(b) also takes account (a) of the amendment of 28 U.S.C. § 1331, which has eliminated the jurisdictional amount in the federal question jurisdiction of the district courts, and (b) of the amendment of § 22(a) by §§ 335(a) and 402(e)of the Bankruptcy Reform Act of 1978, which confer on the district court of Guam the jurisdiction of a bankruptcy court of the United States, effective April 1, 1984.

Section 22(c) restates the second clause of the second sentence of § 22(a) of the Act, 48 U.S.C. § 1424. It adds that where the district court retains jurisdiction over local causes because they were not transferred by the legislature to the local courts, the district court shall be deemed to be a court established by the laws of Guam for the purposes of the requirements of indictment by grand jury or trial by jury.

Section 22(d) states that the appellate jurisdiction of the district court, now referred to in the third clause of the second sentence of § 22(a) of the Act, 48 U.S.C. § 1424, is set forth in § 22C.

Section 22A(a) restates the part of the first sentence of § 22(a) of the Act, 48 U.S.C. § 1424(a), which relates to the local courts. The section specifically authorizes the legislature of Guam to establish an appellate court on or after January 1, 1983. The subsection therefore will not have the effect of reviving the Supreme Court of Guam which was struck down by the Supreme Court of the United States in Guam v. Olsen, 431 U.S. 195 (1977).

Section 22A(b) and (c) restates the last sentence of the first paragraph of § 22(a) of the Act, 48 U.S.C. § 1424(a), relating to the power of the legislature to determine the jurisdiction and procedure in the local courts of Guam. Section 22A(b) stipulates that the jurisdiction of the local courts of Guam is subject to the exclusive or concurrent jurisdiction of the District Court of Guam under § 22(b). Section 22A(c) provides that the procedure in the local courts may also be governed by the rules established by those courts.

Section 22B deals generally with the relations between the federal courts and local courts of Guam. It corresponds to § 104, relating to the Virgin Islands, reference therefore is made to the explanation of that section.

Section 22C amplifies the second paragraph of § 22(a) of the Act, 48 U.S.C. § 1424(a). It corresponds to § 105, relating to the Virgin Islands, reference therefore is made to the explanation of that section.

Section 22D is based on and expands § 22(b) of the Act, 48 U.S.C. § 1424(b). It corresponds to § 106(b) relating to the Virgin Islands, reference therefore is made to the explanation of that subsection. Section 22D [illegible] provisions of § 22(b) of the Act, 48 U.S.C. § 1424(b), relating to trial by jury and prosecution by information rather than by grand jury. Those provisions have been superseded by § 10 of the Elected Governor Act of 1968, 48 U.S.C. § 1421b(u), which introduced into Guam the Fifth and Sixth Amendments to the Constitution of the United States without the reservation relating to grand juries contained in the corresponding provisions applicable to the Virgin Islands. Grand juries and petit juries therefore have been utilized in federal prosecutions on Guam for many years.

Section 202 amends § 24 of the Act, 48 U.S.C. 1424b. Section 202(a) provides for the appointment of the district judge for a term of ten rather than eight years in order to provide for retirement benefits to district judges who fail of reappointment after their first term. See the explanation of § 106(a).

Section 202(b) is self explanatory.

Section 202(c) conforms § 24(b) of the Act, 48 U.S.C. 1424b(b), to the renumbering of the chapters of title 28, United States Code, in 1966.

Section 202(d) repeals § 24(c) of the Act, 48 U.S.C. 1424b(c), which has become redundant as the result of the general applicability to Guam of title 28, United States Code by virtue of § 22D.

Section 203. The reason for this repeal is given in the last two sentences of the explanation of § 22D.

Title III

This Title amends the Act of November 8, 1977, 91 Stat. 1265, (Act) 48 U.S.C. §§ 1694-1694e, which establishes the federal judicial system in, and its relationship to the local courts of, the Northern Mariana Islands in conformity with Article IV of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved on March 24, 1976, 90 Stat. 263 (Covenant), 48 U.S.C. § 1681, note. In view of the policy to avoid departure from the text of the Covenant as much as possible the amendments of the Act have been held at a minimum. In particular, § 1(c) of the Act, 48 U.S.C. § 1694(c), has not been conformed to §§ 106(b) and to § 22D of the Organic Act of Guam, as added by § 201 of this legislation. Similarly § 4 of the Act, 48 U.S.C. § 1694c(a) has not been amended so as to incorporate the technical definition of the federal question found e.g. in §§ 104-105(c), and §§ 22B and 22C(c) of the Organic Act of Guam added by § 201 of this legislation. It is expected nevertheless that the interpretation of the

Act will be guided the ideas underlying Titles I and II of this legislation.

Section 301 amends § 1(b)(1) of the Act, 48 U.S.C. § 1694(b)(1), by providing that the district judge shall be appointed for a term of ten rather than of eight years. The purpose of this amendment is -- as explained in the comments on § 106(a) -- to provide for retirement benefits to a district judge who fails of reappointment after his first term.

Section 302 amends § 2(a) of the Act, 48 U.S.C. § 1694(a), in three aspects. First, it adjusts the section to the recent amendment of 28 U.S.C. § 1331 which gives the district courts federal question jurisdiction without regard of the amount in controversy. Second, it provides that, effective April 1, 1984, the court will have the jurisdiction of a bankruptcy court of the United States, as have the district courts of Guam and of the Virgin Islands.

Third, it generally limits the jurisdiction of the district court with respect to the government of the Trust Territory of the Pacific Islands to actions brought by that government and to those actions against it which may be brought against a foreign government under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605, i.e. to those which are based on commercial activities carried on in the Northern Mariana Islands or on certain torts occurring there. In such actions the Trust Territory Government is entitled to such rights and privileges as are applicable to the United States where it is a party, e.g. venue, the statute of limitations, absence of a jury trial, counterclaims. This provision has been prompted by the decision of the appellate division of the District Court for the Northern Mariana Islands in Sablan Construction Company v. Government of the Trust Territory of the Pacific Islands, 526 F.Supp. 135 (D. N.M.I. App. Div. 1981) in which the court assumed jurisdiction in a tax case involving the Trust Territory Government. Temengil v. Government of the Trust Territory of the Pacific Islands, D.C. N.M.I. No. 81-0006, now under advisement, also involves the judicial review of governmental acts of the Trust Territory. The continued physical presence of the Trust Territory Government in the Northern Mariana Islands is an anomaly and historic accident and was not anticipated when the district court was established. Furthermore the assumption of jurisdiction over that government by the district court is in conflict with People of Saipan v.

United States Dept. of the Interior, 502 F.2d 90, 95-96, 99-100 (9th Cir. 1974), cert. denied 420 U.S. 1003 (1975) which held, first, that the Trust Territory Government is not a federal agency and, second, that the actions of that government are not directly reviewable in the federal courts. The interests of the people of the Northern Mariana Islands are sufficiently protected by giving the district court contract and tort jurisdiction over the Trust Territory Government. The preclusion of review by the district court of the governmental activities of that government is not likely to prejudice the citizens of the Northern Mariana Islands since the Trust Territory Government has not exercised any governmental functions with respect to those Islands for six years since 1976. On the other hand, continued jurisdiction of the district court over the Trust Territory Government may result in suits being brought against it by residents of other Micronesian islands and adversely affect the detailed claims settlement arrangements provided for in the Compact with the Micronesian entities. The enactment of this provision may require the issuance of an Order by the Secretary of the Interior clarifying the jurisdiction of the High Court of the Trust Territory over the Trust Territory Government.

Section 303 deals with § 3 of the Act, 48 U.S.C. § 1694b, relating to the appellate jurisdiction of the district court for the Northern Mariana Islands.

First, § 303(a) makes it clear that the appellate division of the District Court for the Northern Mariana Islands has jurisdiction only over the appeals from the decisions of the local courts of the Northern Mariana Islands and not over those of the district court. This clarification of § 3 of the Act has been required by the decision in Sablan v. Santos, 634 F.2d 1153 (9th Cir. 1980), which held that appeals from district court decisions in local law matters are to be taken to the appellate division of the district court rather than to the Court of Appeals for the Ninth Circuit. That decision is in conflict with § 402(c) of the Covenant with the Northern Mariana Islands (48 U.S.C. § 1681 note) on which § 3 of the Act is based. The explanation of § 402(c) in the Senate Report on the Covenant specifically states "the District Court will have such appellate jurisdiction over the decisions of the local courts of the Northern Mariana Islands as the laws of the Northern Mariana Islands provide" 3/ S. Rep.

3/ The clause such appellate jurisdiction "as the laws of the Northern Mariana Islands [illegible]de evidently means as do the corresponding provisions on Guam and in the Virgin Islands (cf.

(Cont. on p. 13)

No. 433, 94th Cong. 1st Sess. 73 (1975) emphasis supplied. Moreover, the appellate division of the District Court for the Northern Mariana Islands has been patterned on the appellate division of the District Court of Guam. In re Webster, 363 F.2d 837, 839 (9th Cir. 1966), held that the appellate division of the District Court of Guam "has no jurisdiction except to hear appeals from the Island Court of Guam [i.e. the local court] to the District Court of Guam." Subsequent decisions of the Court of Appeals for the Ninth Circuit, Taisacan v. Camacho, 660 F.2d 411, 413 (9th Cir. 1981), and Camacho, v. Civil Service Commission, 666 F.2d 1257, 1259-62 (9th Cir. 1982), point to the problems created by Sablan v. Santos, supra, viz., (a) the difficulty of determining whether a decision is based on local or federal law (666 F.2d at 1262), (b) whether an appeal to the court of appeals lies from a decision of the appellate division in matters of local law, and (c) whether a decision of the district court in matters of federal law can be appealed directly to the court of appeals. Hence, it appears imperative to clarify the point that all appeals from the decision of the district court go directly to the Court of Appeals for the Ninth Circuit.

Second, § 303(a) provides, as do §§ 105, (§23A(a)) and 201, (§ 22c(a)), that the local legislature cannot preclude appeals to the appellate division of the district court from the decisions of the local courts which involve a federal question. The formulation of the concept of federal question is explained in analysis of § 104.

Third, § 303(c) provides, as do §§ 105 (§23A(c)) and § 201 § 22c(c), that the decisions of the appellate division are reviewable in the court of appeals only to the extent that they involve a federal question. The reason for the limitation of appeals to the Court of Appeals to those which involve federal questions is given in the explanation of § 105.

Title IV.

Section 401. This section repeals §§ 335, 336 and 402(e) of the Bankruptcy Act of 1978, because they have been incorporated

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3/ (Cont.)
48 U.S.C. §§ 1424(a) and 1612) that the laws of the Northern Mariana Islands may restrict the right of appeal, not that a local legislature can determine the court to which the decision of a federal court may be appealed.

in §§ 103(a), and 201.

Section 402. The section provides that the proposed legislation will become effective on the first day of the third month following its enactment. In view of the many changes in the jurisdiction of courts contained in this legislation, its effectiveness has been delayed by at least two months following its enactment.

II

97TH CONGRESS
2D SESSION

S. 2888

Directing the President to prepare and submit an annual report on the state of the insular areas to Congress, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 9 (legislative day, SEPTEMBER 8), 1982

Mr. BAKER (for Mr. MCCLURE) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

Directing the President to prepare and submit an annual report on the state of the insular areas to Congress, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SEC. 101. This title may be cited as the "State of the Insular Areas Report Act".

SEC. 102. The President is authorized and directed to prepare and transmit a state of the insular areas report to the Speaker of the United States House of Representatives and the President of the United States Senate not later than February 15 of each year. The report shall indicate the social, economic, and political conditions of the insular areas of the United States through the preceding fiscal year. For the purposes of this title, the term "insular area" includes Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any area not within the boundaries of the several States over which the United States claims or exercises sovereignty including, but not limited to, Navassa, Palmyra, Johnston Island, and Wake Island. The report shall detail changes in those conditions which occurred during the fiscal year as well as foreseeable future developments and recommended actions.

SEC. 103. Matters on which the report shall provide information for each insular area shall include, but not be limited to, improvements in the insular area's Federal relationship; progress toward full self-government; the applicability or inapplicability of Federal statutory and administrative actions and their impacts; the effectiveness and delivery of Federal programs; discrimination in the treatment of the insular area or its residents under any Federal policy or program relative to the treatment of the States or their citizens; the activities and accomplishments of agencies pertaining to the insular area; the adequacy of essential public infrastructure; general economic conditions; private sector activities and development and investment potential; existing employment and job opportunities and training; the fiscal position of the insular area; amounts and uses of Federal direct and indirect assistance; the capability of the local government to administer and manage various programs and what efforts Federal agencies are making to improve that capability; international obligations or undertakings regarding the insular area; and compliance with legislative mandates.

SEC. 104. The report shall clearly state the program of the President with regard to the matters specified in section 103, together with such specific proposals to accomplish said program as he deems appropriate.

SEC. 105. Funds appropriated for the expenses of the Office of the President and the Office of Territorial and International Affairs of the Department of the Interior are authorized to be used for the purposes of this title.

TITLE II

SEC. 201. Section 205 of Public Law 95–134 (91 Stat. 1159, 1162), as amended by subsection 1(d) of Public Law 95–348 (92 Stat. 487, 488), is further amended by deleting "Medical Center of the Marianas:" and inserting in lieu thereof "Medical Center of the Marianas, to renovate, maintain, and operate the Guam Memorial Hospital, and to construct, maintain, and operate a health care facility in the northern part of Guam:".

SEC. 202. There are hereby authorized to be appropriated to the Secretary of the Interior not to exceed $40,000,000 for grants to the government of the Virgin Islands for improvements in the generation and distribution of water and power.

SEC. 203. There are hereby authorized to be appropriated to the Secretary of the Interior not to exceed $3,000,000 for grants to the government of the Virgin Islands for construction of two juvenile pretrial detention facilities, one on the island of Saint Thomas, and one on the island of Saint Croix.

SEC. 204. Section 202 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding any other provision of this Act, the amount of any grant for treatment works in Puerto Rico made under this Act shall be 95 per centum of the cost of construction thereof (as approved by the Administrator) in the case of a grant from funds authorized for the fiscal year ending September 30, 1982, 90 per centum of the cost of construction thereof (as approved by the Administrator) in the case of a grant from funds authorized for the fiscal year ending September 30, 1983, 85 per centum of the cost of construction thereof (as approved by the Administrator) in the case of a grant from funds authorized for the fiscal year ending September 30, 1984, and 75 per centum of the cost of construction thereof (as approved by the Administrator) in the case of a grant from funds authorized for the fiscal year ending September 30, 1985.".

○

Jim B.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 10 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
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Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your committee has requested the views of this Department on S. 2888, a bill "Directing the President to prepare and submit an annual report on the state of the insular areas to Congress, and for other purposes."

We oppose the enactment of S. 2888 with the exception of section 204, on which we defer to the Environmental Protection Agency.

Title I

Title I would direct the President to prepare and submit to Congress an annual report on the state of the insular areas. The Administration opposes title I.

It would not seem appropriate for the President to send such a message to the Congress. Currently, the President is required to submit three items to the Congress: the State of the Union Address, the budget, and the economic report, each of which deals with or affects the territories in some form. Morever, S. 2633, if enacted, would require a single comprehensive annual financial report to be prepared, published and submitted by the chief executive of each territory within 120 days of the close of the fiscal year. Such a comprehensive report should and presumably would, include many of the items required to be submitted by the President under S. 2888, thereby leading to a sizeable duplication of effort. One of the major efforts of this Administration has been to eliminate reporting requirements, where possible. Legislation on this subject has been forwarded to Congress. The Presidential report contemplated in S. 2888 would be inconsistent with this effort.

Section 201

Section 201 is intended to give Guam flexibility in the use of the remaining $10 million authorized to meet the health care needs of

Guam, including the purchase of goods and services to maintain and operate the Medical Center of the Marianas. The proposed language appears to be unnecessary. Renovation of the old Guam Memorial Hospital, for extended health care purposes, would certainly meet the requirement contained in section 205 of Public Law 95-134 that the money be used for the "health care needs of Guam." Use of the $10 million authorization for the operation and maintenance of a renovated extended health care facility at the site of the old Guam Memorial Hospital would be authorized under section 1(b) of Public Law 95-348, if the facility is made a part of the Medical Center of the Marianas. We oppose enactment of section 201.

Section 202

Section 202 would authorize the appropriation of $40 million for water and power in the Virgin Islands. Federal budgetary constraints will not permit expenditure of $40 million at this time. If intended for 1983, it would be over budget. The Governor of the Virgin Islands has requested funding for water and power, which is being considered in our formulation of the 1984 budget. To authorize funding at this time would be premature.

It should be noted that water is subsidized in the Virgin Islands. If customers were properly charged for the water produced by the Virgin Islands Water and Power Authority, more funds would be available to finance the replacement and extension of water production and distribution facilities.

Section 203

Section 203 would authorize the Secretary of the Interior to grant up to $3 million to the Government of the Virgin Islands for the construction of one juvenile pre-trial detention facility on St. Thomas and another on St. Croix.

We oppose section 203 for the same fiscal reasons noted in our comments on section 202.

Section 204

Section 204 deals with Federal water pollution control in Puerto Rico. We defer to the Environmental Protection Agency with regard to section 204.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Pedro A. Sanjuan

ASSISTANT SECRETARY

The CHAIRMAN. We have an ambitious agenda for today's hearing. In the interest of time and in order to afford us an opportunity to question the witnesses, the prepared statement together with supporting material for each witness will be printed in full in the record.

I would appreciate it if each witness would very briefly summarize their position and focus on any of the problems or changes which might be proposed. I hope that Congress will be able to take action on these measures in this session, and if the testimony would focus on particular problems, it would assist us greatly in getting that done.

Our first witness this morning, is the Honorable Antonio Borja Won Pat, House of Representatives. This isn't the first time you have had the opportunity to appear before this committee, nor the first time we have had the honor of hearing from you. You are very welcome here.

STATEMENT OF HON. ANTONIO B. WON PAT, DELEGATE FROM GUAM

Mr. WON PAT. Thank you very much, sir. Mr. Chairman and distinguished members of the Committee on Energy and Natural Resources, I want to thank you for this opportunity to speak on the several pieces of legislation before your committee as we near the end of the 97th Congress.

Let me assure you that the people I represent appreciate each of these additions. They are wise, just, and sorely needed.

Unfortunately, one is also very controversial, so much so that it provoked a strenuous administration veto vote. It would have reimbursed Guam and the Virgin Islands with some $90 million of the estimated $254 million in losses to our local treasuries callously forced upon us by the Reagan tax policies.

There is no question that this reimbursement is needed. The revenues lost have severely worsened our deficit situations and resulted in an inability to finance vital services, particularly essential infrastructure development.

Furthermore, the Interior Department has not delivered one iota on its promise to this committee to correct the fiscal crisis we face because of the Reagan economic policies, but as critical as that tax loss reimbursement assistance is, it is not worth a veto of a bill containing other worthwhile provisions originating in both Chambers, so our House action concurred in all but this provision of H.R. 5139 as it passed the Senate.

As an alternative, we also added several important proposals. Most are contained in the bills before you today.

If this omnibus territories assistance bill is to become law, it must have your full support. We, therefore, ask that the Senate concur in the House's amendment at the earliest possible opportunity.

Before closing, I would like to comment on one proposal contained in S. 2888 which I wholeheartedly support but the House did not act upon.

Title I is identical to the State of the Insular Areas Report proposal as we considered adding it to H.R. 5139. We did not add it out of deference to the administration. They vigorously opposed having the President inform the Congress annually of conditions in and his policies for the insular areas, and as I have said, we have tried to make this legislation as unobjectionable as possible to an uncooperative administration.

There is no better argument for this proposal, however, than the record of how this administration has ignored the needs of our millions of territorial Americans. Their public relations have promised more and more, but their policies have meant for us only less and less.

I hope that there will be some way to make them accountable to those of us in the islands who lack political power that we will be able to act on in the future.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Won Pat follows:]

TESTIMONY OF THE HON. A.B. WON PAT, M.C.
To The
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
September 13, 1982

Mr. Chairman and distinguished members of this Committee:

Thank you for this opportunity to speak on the several pieces of territorial legislation before your Committee as we near the end of the 97th Congress.

I am here in dual capacities. I represent both the people of Guam and the House subcommittee I chair, which has responsibilities for all U.S. territories.

My message today, though, is singular: Please join with your House colleagues to ensure that, in the remaining few legislative days of this year, this Congress makes the contribution it should to territorial law.

Doing so will require hard decisions... hard decisions such as the ones we in the House made last Thursday. We were confronted then with the Senate's additions to H.R. 5139, which had initially passed the House as an uncontroversial bill, unopposed by the Administration.

Let me assure you that the people I represent appreciate each of those additions. They are wise and just and needed.

Unfortunately, one was also very controversial... so much so that it provoked a strenuous Administration veto threat. It would have reimbursed Guam and the Virgin Islands for some $90 million of the estimated $254 million in losses to our local treasuries callously forced upon us by Mr. Reagan's tax policies.

There is no question that this reimbursement is needed. The revenues lost our islands have severely worsened our deficit situations and resulted in an inability to finance vital services, particularly essential infrastructure development. Furthermore, the Interior Department has not delivered one iota on its promise to this Committee to correct the fiscal crisis we face because of the Reagan economic policies.

But as critical as tax loss reimbursement assistance is, it is not worth a veto of a bill containing other worthwhile provisions originating in both chambers. So, our House action concurred in all but this provision of H.R. 5139, as it passed the Senate.

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We did not add it out of deference to the Administration. They vigorously oppose having the President inform the Congress annually of conditions in and his policies for the insular areas. And, as I have said, we have tried to make this legislation as unobjectionable as possible to an uncooperative Administration.

There is no better argument for this proposal, however, than the record of how this Administration has ignored the needs of our millions of territorial Americans. Their public relations have promised more and more; but their policies have meant for us only less and less.

I hope that there will be some way to make them accountable to those of us in the islands who lack political power that we will be able to act on in the future.

Thank you.

The **Chairman**. Thank you very much, Mr. Won Pat. I have just four or five questions. The committee has before it S. 2090, which deals with the application of the Clean Air Act in the Northern Mariana Islands.

Has the situation of Guam Power Authority's compliance with the Clean Air Act been resolved, or should the committee consider extending S. 2090 to cover Guam and the other territories as well?

Mr. **Won Pat**. The bill should be expanded to provide the authority to the insular government so they have the flexibility to determine whether these laws should be made applicable or not because the islands as they are, I don't think there is a need to have what they call equipment to do away with, or in other words, to purify such pollution.

Now take the case of Guam. Under the Clean Air Act, we are obligated to install scrubbers. Now the scrubbers will cost $20 million. We cannot afford that. Besides that, the pollution, the emission of pollution in the islands, of course, does not stay in the same area. In other words, they are blown out to sea, and the closest land next to Guam would be 1,500 to 2,000 miles away, so all these things will dissipate in the air, so the need for the application of the Clean Air Act in this area I believe is useless, so that is why the insular government authorities should be given that flexibility as to its applicability to the area.

The **Chairman**. S. 2633 deals with the transfer of the Government's comptrollers to the Inspector General's Office. Some concern has been raised over the cost to the territorial governments of an independent audit of the annual report from the territories.

Would you favor having the Inspector General do the certification?

Mr. **Won Pat**. I remember way back maybe before I became a Member of Congress when the Congress instituted the control, the Federal Comptroller on the territories in order to keep account of the Federal funds being expended, and I fully, of course, supported that, notwithstanding the fact that local legislators did not agree.

However, the present comptrollers are doing a pretty good job in trying to keep track of how our Federal funds are spent, but reports, of course, repeatedly have shown that there are many anomalies in the accounting procedures, in other words, the disbursement of Government funds. For that reason, comptrollers should continue to be maintained, be employed or used.

Now it is necessary that the GAO have jurisdiction over this because they have accountability to Congress. Now if we have local auditors to do that, why they will not be as receptive to Congress as would be a Federal agency, but I do believe strongly that the Federal Comptrollers should be maintained in these areas on the island government.

The **Chairman**. Section 201 of S. 2888 would modify the existing authorization for health care needs in Guam.

What is the purpose of the modification? What is it intended to do, and why is it necessary?

Mr. **Won Pat**. The old Guam Memorial Hospital has been established or built since the Nixon administration, and that has, of course, deteriorated over the years. That is over 30 years. Now that is replaced by the Mariana Medical Center which was a newer institution or building, so what we need, we are really redefining, in other words, the authorization so that this money could be used for the rehabilitation of the Guam Memorial Hospital, and furthermore, of course, to install the health facilities on the northern part of the islands. Presently we only have one outside facility on the southern part of the islands.

The CHAIRMAN. Do you think this change of language is going to—what will it accomplish that you can't do under the existing language?

Mr. WON PAT. Yes, in other words, the language is necessary in order to allow, of course, that flexibility to the local government.

The CHAIRMAN. Senator Johnston?

Senator JOHNSTON. Thank you, Mr. Chairman. I would simply like to welcome Tony Won Pat back to the committee. As usual, he has made a very powerful presentation. I think the case he presented is persuasive. I am particularly convinced on the Guam Power Authority exemption from the Clean Air Act. This is something I have been working on for a long time. It was a mistake in the first place ever to include Guam under the strictures of the Clean Air Act, washed as it is by the trade winds. I think the exemption definitely ought to be included, in legislation this year and it is getting late in the day, the legislative day, to pass a bill. I think the bill as it comes to us from the House is a good one, and I think Tony Won Pat makes a good case for it. While I want to listen to the rest of the testimony, I think the case is persuasive, and I intend, subject to having my mind dissuaded by a powerful argument to the contrary, to vote as Tony recommends.

The CHAIRMAN. Senator Ford?

Senator FORD. I have no questions after the eloquent statement of the distinguished Senator from Louisiana.

The CHAIRMAN. I thank you very much. There may be a couple of other questions we will submit for the record, so that you will have the opportunity to express yourself on the record on those matters.

I do appreciate your testimony here this morning. We hope we will be able to move some legislation before the end of this session. I think we all share that goal.

Mr. WON PAT. As you know, sir, last week we managed, of course, to get the bill through the House. I know it was a very difficult problem, and I recognize also the problem that you face, but I am very, very appreciative, and of course, on behalf of the territories, because as you know, chairing what they call the Committee on Insular Affairs is a real difficult matter. You have to, of course, take into account all the very unique interests of the territories.

The CHAIRMAN. Yes, sir. Thank you very much for your appearance here today.

Mr. WON PAT. Thank you very much, sir. Thank you very much, Senator Johnston.

The CHAIRMAN. The next witness is the Honorable Ron de Lugo and the Honorable Juan Luis, Governor of the Virgin Islands of the United States.

Will those two witnesses come forward together with whatever supporting staff they may have?

Mr. de Lugo. Thank you, Mr. Chairman. I am accompanied by the Governor, Governor Juan Luis of the Virgin Islands, and legal counsel, Mr. Blum, and I see that he also has with him the executive director of the water and power authority.

When you throw some of those questions to me, I am going to just turn them over to them.

The Chairman. I knew you would want to do that. That is why I asked him to come up at the same time. If my Governor was here and I was testifying, I would do the same thing.

STATEMENT OF HON. RON de LUGO, DELEGATE FROM THE VIRGIN ISLANDS

Mr. de Lugo. Thank you, Mr. Chairman. I want to begin. I am going to make a very brief summary of my formal statement, but I want to just say how much I appreciate and we in the territories appreciate the leadership that you have shown consistently for the territories and the time you have taken to help us with our problems, and my very good personal friend there to your left, Senator Bennett Johnston, who we are constantly calling on him to help us, so I want to just say we have got two very good friends in Chairman McClure, and Senator Johnston.

The Chairman. Mr. de Lugo, I can add that with respect to my friend from Louisiana, he has been a very great help to me and I know the help he has been to you in the territorial matters. I want the record to show that as well.

Senator Johnston. This is a very good hearing.

Mr. de Lugo. I think we should quit while we are ahead. As we come to the end of this Congress, the need for a solution to the problems faced by the territories is increasingly apparent.

Thus I commend this committee for taking up the Omnibus territories bill, and in particular, both of you gentlemen for the attention that you have addressed to this matter.

S. 2888 reflects in part H.R. 5139 as passed by the House of Representatives on Thursday night of last week, and other items.

Mr. Chairman, I strongly urge that the committee concur in the House amendments to H.R. 5139 which I will briefly outline now.

As you well know, Mr. Chairman, the supply of water and power to the people of the Virgin Islands has been an on-going battle with demand on local facilities clearly overpowering the local capability. The problems faced by the power facility have been carefully studied so as to provide a reasoned solution to our problem. The short-term solution for which we seen funding of $10 million for fiscal year 1983 is set out in the addendum to my statement.

The need for a juvenile detention center, one for St. Thomas, St. John, and one for St. Croix, is clear due to the serious criminal activity in the Virgin Islands which has increased at an alarming rate. Much of the crime is said to be attributable to young repeat offenders. Local law enforcement has been frustrated by the lack of facilities in which to hold young criminals prior to trial when apprehended. The result has been that many are returned to the streets and commit additional crimes while pending trial. These facilities for which we are seeking $3 million for construction would have a real impact on criminal activity in the U.S. Virgin Islands.

Another amendment to H.R. 5139 addresses several issues of particular importance to the Virgin Islands. As your committee recognized in its report on the fiscal year 1982 appropriations bill, the precarious fiscal position of the government of the Virgin Islands would further be weakened by the administration's 1981 program and tax cuts. They had a much greater impact on the territories than on the governmental entities within the United States.

The committee's conclusion was stated in its report on an administration-sponsored proposal to assist the territories of Guam and the Virgin Islands in eliminating accumulated and operating deficits and improving budget management. If that assistance had been provided as Congress intended, we would not have had to come before you today requesting special assistance. However, the administration has ignored the Guam-Virgin Islands budget assistance program. It has used the Secretary of the Interior's responsibility to approve the territorial balanced budget plans to block implementation of the law.

It has also ignored the Appropriations Committee advice to devise a way of rectifying the adverse effects on the territories of the administration's program.

As chairman of the congressional territorial caucus, I know that Guamanians join Virgin Islanders in appreciating your leadership, Mr. Chairman, as well as that of Senator Johnston, in obtaining your committee's amendment of H.R. 5139 to remove Interior's power to prevent implementation of the budget assistance program.

I ask this committee's support for an additional amendment which was adopted by the House last week to H.R. 5139 and the amendment is one which is most important to the economic and fiscal stability of the U.S. Virgin Islands.

Approximately one sixth of the revenues of the territorial government derive from the collection of excise taxes on rum produced in the Virgin Islands and sold in the United States. The rum industry employs some 3 percent of the territory's manufacturing work force. In light of the importance of the rum industry to our economy, an economy much more fragile than those of the 50 States, it is necessary that the people of the Virgin Islands have a more direct voice in the assessing of the environmental standards to which that industry will be held.

The amendment would permit the Governor of the Virgin Islands to exempt the nontoxic ocean outfall discharges of existing rum distilleries in the territory from certain provisions of the Clean Water Act if he determined that the continuance of such discharges would not adversely affect water quality, a balanced population of aquatic life, or human health.

This amendment has been reviewed, and it has been endorsed by the respective chairmen and ranking minority members of the Committee on Public Works and Transportation on which I serve, and that committee's Subcommittee on Water Resources which has jurisdiction over Clean Water Act matters.

The administration has also indicated its support for this amendment in the context of the Caribbean Basin legislation. This amendment also has the support of all segments of the Virgin Islands Government. I hope that my colleagues will support this important amendment.

Other amendments to H.R. 5139 are outlined in my enclosed statement, and at this point I would like to introduce to the committee—actually I don't have to introduce him. He has been before you many, many times and argued persuasively in the interest of the people of the Virgin Islands—the Governor of the Virgin Islands, Gov. Juan Luis.

[The prepared statement of Mr. de Lugo follows:]

TESTIMONY OF RON DE LUGO,

DELEGATE FROM THE U.S. VIRGIN ISLANDS

MR. CHAIRMAN:

AS WE COME TO THE END OF THIS CONGRESS, THE NEED FOR A SOLUTION TO THE PROBLEMS FACED BY TERRITORIES IS INCREASINGLY APPARENT. THUS, I COMMEND THIS COMMITTEE FOR TAKING UP THE OMNIBUS TERRITORIES BILL AND, IN PARTICULAR YOURSELF, MR. CHAIRMAN, AND SENATOR JOHNSTON, FOR THE PROVISION MADE FOR THE NEEDS OF THE TERRITORIES IN THE SENATE AMENDMENT TO THE BILL. I FURTHER COMMEND THE COMMITTEE FOR ITS CONSIDERATION OF SEVERAL MATTERS OF GREAT IMPORTANCE TO THE TERRITORIES, AS REFLECTED IN S.2633, S.2729 AND S._2888_____.

S._2888__ ADDRESSES, IN PART, THE REQUESTS MADE BEFORE THE SENATE APPROPRIATIONS COMMITTEE IN MAY WITH REGARD TO THE VIRGIN ISLANDS NEED FOR CAPITAL ASSISTANCE ON ITS WATER AND POWER AND JUVENILE DETENTION CENTER PROJECTS. I URGE THE COMMITTEE TO ADOPT THESE PROVISIONS.

AS YOU WELL KNOW, MR. CHAIRMAN, THE SUPPLY OF WATER AND POWER TO THE PEOPLE OF THE VIRGIN ISLANDS HAS BEEN AN ONGOING BATTLE, WITH THE DEMANDS ON LOCAL FACILITIES CLEARLY OVERPOWERING THEIR CAPABILITIES. THE POPULATION IN THE TERRITORY DOUBLED FROM 1960 TO 1970, AND DOUBLED AGAIN BETWEEN 1970 AND 1980. THIS RAPID GROWTH, WHILE PRODUCING THE HIGHEST STANDARDS OF LIVING IN THE CARIBBEAN, ALSO HAD THE EFFECT OF CREATING HAVOC WITH THE INFRASTRUCTURE RESPONSIBILITIES OF THE LOCAL GOVERNMENT.

As a result of our successful experience with desalination plants, we are just emerging from years of relying upon the exhorbitant and wasteful process of barging water from Puerto Rico. Water supply, however, is still below demand. The water distribution system, meanwhile, has eroded through the years. Erosion coupled with increased pressure on the small pipes due to rising demand has lead to breakages, resulting in a 30% water loss.

Electric outages are frequent, with damaging consequences throughout the territory: normal activities are periodically disrupted; businesses are forced to shut-down; consumer goods are ruined; and business and public institutions must be power self-sufficient or have stand-by capabilities if they are to operate without interruption. The inadequacies of the system have seriously hampered the quality of life and forestalled further economic development.

The problems faced by the Virgin Islands water and power facilities have been carefully studied so as to provide a reasoned solution to our problem. The short term solution, for which we seek funding, is set out in the addendum to my statement. The savings to the Virgin Islands Government through the resulting efficiency in the system would provide much of the revenues needed to proceed with the long term plans to bring the facilities up to reliable operating capacity.

The need for juvenile detention centers, one for St. Thomas / St. John and one for St. Croix, is clear due to the serious criminal activity in the Virgin Islands which has increased at an alarming rate. There have been many negative consequences. Most importantly, residents have suffered as victims or from fear of becoming victims. The results of a recent questionnaire that I sent to the people of the Virgin Islands indicates that far and away over any other problem, crime is the most serious concern in our community.

Much of the crime is said to be attributable to young, repeat offenders. Local law enforcement has been frustrated by the lack of facilities in which to hold young criminals prior to trial when apprehended. The result has been that many are returned to the streets and commit additional crimes while pending trial. These facilities will go a long way to curbing a situation which has compounded criminal activity in the islands.

S. 2888 also requires the President to report annually to the Congress on conditions in each of the insular areas. The reports would detail social, economic, and political developments during the preceding fiscal year, as well as foreseeable future developments, and would state the President's policy regarding these matters. The bill parallels H.R. 6780, and is viewed by the territories as an important step toward assuring a clear territorial policy in each administration.

The amendment to H.R. 3519 addresses several issues of particular importance to the Virgin Islands. As your Committee recognized in its report on the Fiscal Year 1982 appropriations bill, the precarious fiscal position of the Government of the Virgin Islands was further weakened by the Administration's 1981 program and tax cuts. They had a much greater impact on the territories than on governmental entities within the United States.

The fiscal position they lessened included a substantial accumulated deficit and annual revenue shortfalls. The deficit has undercut our ability to adequately provide essential public services such as reliable power and water and effective crime control.

The Committee on Energy and Natural Resources concluded in 1980 that the provisions enacted "to provide the local territories with sufficient revenues to meet necessary government expenditures while avoiding the need for annual appropriations....had ceased to work." The result is a situation of mounting deficits and deteriorating of public services.

The Committee's conclusion was stated in its report on an Administration-sponsored proposal to assist the territories of Guam and the Virgin Islands in eliminating accumulated and operating deficits and improve budget management. That program, Section 607 of Public Law 96-597, would have provided the Virgin Islands with $30 million in assistance from Fiscal Years 1982 to 1985. This was the estimated need prior to enactment of the Administration's program and tax cuts.

If that assistance had been provided, as Congress intended, we would not have had to come before you today requesting special assistance, only a correction of the problems created by the Administrations economic program. Other than that we would have had the resources necessary to construct facilities to assure power and water services for all of our people and detain youths suspected of committing major crimes.

Sadly, the Administration has ignored the Guam/Virgin Islands budget assistance program. It has used the Secretary of the Interior's responsibility to approve the territorial balanced budgetary plans to block implementation of the law. It has also ignored Appropriations Committee advice to devise a way of rectifying the adverse effects on the territories of the Administration's economic program.

As Chairman of the Congressional Territorial Caucus, I know that Guamanians join Virgin Islanders in appreciating your leadership, Mr. Chairman, as well as that of Senator Johnston in obtaining your Committee's amendment of H.R. 5139 to remove Interior's power to prevent implementation of the budget assistance program.

I also commend both yourself and Senator Johnston for the amendment to H.R. 3159 which clarifies the U.S. Customs Department's and the United States Postal Service's role in assisting the Virgin Islands with its collection of excise taxes. This provision ensures that the Virgin Islands Government will have the critical support of these agencies in its continued efforts to achieve optimum compliance with tax requirements.

Finally with regard to the Senate amendments ot H.R. 5139, I thank Senator Johnston in particular for his support in gaining funding for the study and plan of what will be the Eastern Caribbean Center at the College of the Virgin Islands. The Center would provide for greater educational, cultural and technical interchange between the Virgin Islands and it neighbors.

I ask this Committee's support for an additional amendment to H.R. 5139. The amendment is one which is most important to the economic and fiscal stability of the U.S. Virgin Islands. Approximately one-sixth of the revenues of the territorial Government derive from the collection of excise taxes on rum produced in the Virgin Islands and sold in the United States. The rum industry employes some three percent of the Territory's manufacturing work force. In light of the importance of the rum industry to our economy, an economy much more fragile than those of the fifty states, it is necessary that the people of the Virgin Islands have a more direct voice in the accessing of the environmental standard to which that industry will be held.

The amendment would permit the Governor of the Virgin Islands to exempt the non-toxic ocean outfall discharges of existing rum distilleries in the Territory from certain provisions of the Clean Water Act if he determined that the continuance of such discharges would not adversely affect water quality, a balanced population of aquatic life, or human health. This amendment has been reviewed and endorsed by the respective Chairmen and ranking minority members of the Committee on Public Works and Transportation and that Committee's Subcommittee on Water Resources, which has jurisdiction over Clean Water Act matters. The Administration has also indicated its support for this amendment in the context of the Caribbean Basin

LEGISLATION WHICH NOW SEEMS UNLIKELY TO PASS OUT OF CONGRESS THIS YEAR. THIS AMENDMENT ALSO HAS THE SUPPORT OF ALL SEGMENTS OF THE VIRGIN ISLANDS GOVERNMENT AND PEOPLE. I HOPE THAT MY COLLEAGUES WILL SUPPORT THIS IMPORTANT AMENDMENT.

S. 2633, THE COMPANION BILL TO H.R. 6630, TAKES THE STEP, RECOMMENDED BY THE GENERAL ACCOUNTING OFFICE REPORT ON THE TERRITORIAL AUDIT FUNCTION ISSUED ON MARCH OF THIS YEAR, OF TRANSFERRING THE AUDIT AUTHORITY AND STAFF OF THE TERRITORIAL COMPTROLLERS, CURRENTLY UNDER THE DEPARTMENT OF INTERIOR'S OFFICE OF TERRITORIAL AND INTERNATIONAL AFFAIRS, TO ITS INSPECTOR GENERAL'S OFFICE. WHILE THIS STEP IS WELCOMED FOR REASONS POINTED OUT IN THE GAO REPORT, I URGE THE COMMITTEE TO ASSURE THAT THE TECHNICAL ASSISTANCE PART OF THE COMPTROLLER OPERATIONS PROVIDED BY OTIA NOT ONLY BE MAINTAINED, BUT ENHANCED. THIS WAS SUGGESTED BY THE GAO REPORT, AND ADDITIONAL FUNDING FOR TECHNICAL ASSISTANCE TO THE TERRITORIES HAS BEEN PROVIDED FOR THROUGH THE SUPPLEMENTAL APPROPRIATIONS LEGISLATION.

IN CLOSING, MR. CHAIRMAN, I WANT YOU TO KNOW THAT WE DEEPLY APPRECIATE YOUR CONTINUED INTEREST IN THE DIFFICULTIES FACED BY THE U.S. TERRITORIES, AND YOUR COMMITTMENT TO PURSUING THE CONGRESSIONAL RESPONSIBILITY TOWARDS THE TERRITORIES.

AT THIS POINT, I INTRODUCE OUR DISTINGUISHED GOVERNOR, JUAN LUIS, WHO WILL FUTHER DISCUSS THE NEEDS OF THE U.S. VIRGIN ISLANDS.

ADDENDUM TO STATEMENT SUBMITTED BY
HONORABLE Ron de Lugo, VIRGIN ISLANDS DELEGATE
May 24, 1982

REPAIRS AND IMPROVEMENTS TO THE VIRGIN ISLANDS POTABLE WATER DISTRIBUTION SYSTEMS

FY '83	
St. T.	$1.5 million for replacing water lines in Charlotte Amalie
St. C.	$1.5 for new water storage tank at Estate Richmond
FY '84	
St. T.	$2 million in water line replacement in Charlotte Amalie
St. C.	$500,000 for repairs to water storage tanks
St. J	$500,000 for expansion of water pipelines in Cruz Bay
FY '85	
St. T.	$2 million in water line replacement in Charlotte Amalie
St. C.	$500,000 for development of raw water collection system (raw water collection is running piplines to well fields)
	$500,000 for replacement of water lines in Frederiksted and Christiansted
FY '86	
St. T.	$2 million for replacement of water lines in Charlotte Amalie and construction of water storage tanks in upper Estate Thomas
St. C.	$500,000 for development of raw water collection system
	$500,000 for repairing and replacing pumping stations

Justification

The three populated islands of St. Croix, St. Thomas and St. John comprise the U.S. Virgin Islands. The islands are separated by forty miles of open sea between St. Thomas/St. John and St. Croix and four miles of sea between St. Thomas and St. John. As a result of this physical separation, the basic island infrastructures have developed independently in keeping with their respective physical attributes.

Basic to any understanding of the Virgin Islands is the unprecedented growth that has taken place during the past twenty years. The population in the territory doubled from 1960-1970 and doubled again between 1970-1980.

This rapid growth, while producing the highest standard of living in the Caribbean basin, also had the effect of creating havoc with the infrastructure responsibilities of the local government. This havoc was most clearly manifested in the water supply and distribution systems on all three islands.

Prior to the 1960's, the territory's water supply was a combination of public catchment/cisterns, home cisterns and well water. To distribute this water, the islands' first modern water distribution system was installed in the early 1950's. This aging system of some thirty plus years, supplemented by periodic additions and improvements, comprises the V.I. water distribution system of today.

During the 1960's and 1970's, the Virgin Islands Government in an attempt to keep pace with the water needs of an expanding population and limited by the natural occurunce of fresh water in the territory, committed to the mechanical production of fresh water by desalination. The cost of providing desalinated water however, is considerably higher than water costs in mainland juridictions.

With the price of water at a premium and the need for water so critical to the health and well being of the V.I. community, the accountability of water in the distribution system becomes an important issue. From the early 1970's onward, there was much speculation on the amount of water that was lost due to deficiencies in the pipeline system. Finally, in 1978 the local government in cooperation with numerous federal agencies met for the first time to discuss strategies for improving the supply and distribution of potable water. This meeting which formed the basis for the Federal Regional Council was an offshoot of the White House Rural Affairs Initiatives undertaken by the Carter Administration. By late 1980, three agencies, HUD, FmHA and EDA had committed four million dollars to assist the territory with water distribution problems. Of this amount, $500,000 from HUD was provided for planning and $3 million from FmHA and EDA for implementation.

In early 1981 using the HUD monies, the Department of Public Works solicited proposals and selected the engineering firm of CH2M Hill to undertake a comprehensive engineering evaluation and Master Plan of the St. Thomas/St. Croix systems. This work is presently underway and will be completed by October, 1982.

Preliminary findings substantiated by sonic testing the main water lines indicate that the lines installed in the 1950's, primarily in Charlotte Amalie, Christiansted and Frederiksted, must be replaced. On St. Thomas over 30% of the water entering the system is lost to leakage while on St. Croix approximately 20% disappears into subsurface soils.

Clearly, action must be taken immediately. The four year spending plan breaks down by island the dollar levels required to effect positive improvements to the storage/distribution system were identified by the consulting engineers in conjunction with Public Works officials representing all three islands.

IMPROVEMENTS TO WATER AND POWER AUTHORITY

FY 1983

CAPITAL EXPENDITURES

Island	Equipment	Est. Cost
St. John	2.5 MW Diesel Generator	$1,000,000
St. John	Underwater Distribution Cable	1,500,000
St. Thomas	34.5 KV Substation	500,000
		$3,000,000

BASE LINE EQUIPMENT OVERHAUL (MAJOR)

St. Thomas	Steam Turbine (35 MW)	$1,700,000
St. Thomas	Steam Turbine (18 MW)	800,000
St. Croix	Gas Turbine (15 MW)	1,500,000
	Subtotal	$4,000,000
	Total	$7,000,000

JUSTIFICATION

The capital expenditures above are necessary and justifiable for the following:

The Island of St. John located about four miles to the east of St. Thomas is provided electrical service via an underwater cable with a standby diesel generator in the event of power interruption on the St. Thomas end.

The existing cable, installed some twenty seven years ago, suffers from recurring damage due to age and results in excessive repair costs; it needs to be replaced. The generator, first installed in 1967 and last overhauled in 1974, is rated at 2MW but delivers 1.5 MW. It needs overhaul or replacement. Even if overhauled at a cost of over one quarter million dollars, its capacity is insufficient to carry load for the entire island in the event of a cable failure. Moreover, with the completion of the new health care facility on St. John and projected additional resort and housing development, a new and larger capacity standby system is essential.

In early 1981, the Authority began a rehabilitation program of its baseline electric generating equipment to bring the system to acceptable levels of reliability and efficiency. The expenditures, based on consultants' recommendations in October, 1980, were projected at $14,000,000 over a three to five-year period. To date slightly over $7,000,000 has been expended from funds made available by the V.I. Government and the Authority's revenues. However, that program is threatened non-availability of funds from both of these sources, and the increased reliability and efficiency achieved to date could rapidly diminish if additional funding from other sources are not forthcoming. The expenditures anticipated in this year will result in a reduction of production costs of about two million dollars annually. More importantly, the attendant lowered rate to the consumer via a fuel adjustment clause, and a more reliable and efficient system will encourage investment towards achieving a more diversified economy.

FY 1984

CAPITAL EXPENDITURES

Island		
St. John	Seawater Reverse Osmosis Plt. (100 GPD)	$1,000,000
St. Thomas and St. Croix	Conversion of Gas Turbines to burn lower cost fuel	1,760,000
St. Thomas, St. John and St. Croix	Equipment for Distribution System	662,000
St. Thomas, St. John and St. Croix	Improvements to Electric Distribution System	1,720,000
St. Croix	DE Super heater	345,000
	Subtotal	$5,487,000

MAJOR REPAIRS

	Instrumentation	$ 875,000
St. Thomas	Steam Unit (8.5 MW) - Diesel Unit (3 MW)	638,000
	Subtotal	$1,513,000
	Total	$7,000,000

JUSTIFICATION

On the Island of St. John, the principal sources of public water supply are from a series of wells which feed water to Cruz Bay and supplemented by water barged from St. Thomas. The Department of Conservation and Cultural Affairs, in developing its Comprehensive Water Resources Management Plan has recommended a 100,000 GPD reverse osmosis plant for St. John to eliminate the need for barging and assure an adequate supply of potable water. The expenditure breakdown for capital expenditures includes an amount of $1.0 million to provide for the purchase and installation of the plant.

Monies for improvements to the electrical distribution system are to effect reductions in line loss, convert a major part of the system to 3¢. Included will be reconductoring, capacitors, transformation, relay stations. Most of the present system is as originally installed under REA Standards and is inadequate for present day needs.

Similarly, equipment, primarily rolling stock, digger trucks, etc. have been in service for as many as ten years, was never the type needed, but purchased on available funds. They need to be replaced or in some instances, bought for a first time. The result will be reductions in line loss and a more efficient operation.

Major repairs will consist primarily of modernization of instrumentation controls. Most generating equipment in the system have instrumentation not manufactured as shelf items today so that repairs and / or replacements are costly custom installations.

FY 1985

CAPITAL EXPENDITURES

Island	Equipment	Est. Cost
St. Thomas, St. Croix	Waste Heat Recovery Boiler	$4,444,000
St. Thomas, St. Croix	Improvements to Electric Distribution System	$2,556,000

JUSTIFICATION

Installation of waste heat recovery boilers will increase the efficiency of gas combustion turbines presently in the system, reducing fuel costs, and will provide additional steam for desalination purposes.

FY 1986

CAPITAL EXPENDITURES

Island	Equipment	Est. Cost
St. Thomas	One (1) 1,200,000 GPD Desalination Plant	$7,000,000

JUSTIFICATION

The extension of the water distribution system to the east end of the Island, coupled with the anticipated retirement of the aged BLH plant will require a new water plant by 1987. The potable water needs for the Island have been projected at some 4.5 million gpd and a new plant will be required to meet that demand.

The **Chairman**. Thank you very much, Mr. de Lugo, and Governor, you are, of course, very welcome before this committee as always. We look forward to hearing your statement and continuing to work with you on the problems that confront your territory. You may proceed.

Governor **Luis**. Thank you very much. I really appreciate your ongoing help, and I hope that we can work together to resolve some of our problems as they affect the Virgin Islands.

STATEMENT OF HON. JUAN LUIS, GOVERNOR OF THE VIRGIN ISLANDS; ACCOMPANIED BY THOMAS R. BLAKE, EXECUTIVE DIRECTOR, VIRGIN ISLANDS WATER AND POWER AUTHORITY; AND WILLIAM BLUM, SPECIAL COUNSEL TO THE GOVERNOR OF THE VIRGIN ISLANDS

Governor **Luis**. Mr. Chairman, distinguished members of this committee, thank you for this opportunity to appear before you to comment on several proposed bills which will affect the Virgin Islands.

It is always a pleasure to work together with you to find solutions to the problems faced by the Virgin Islands.

First, I would like to discuss two matters of utmost importance for improving the economic health and maintaining the social stability of the Virgin Islands. One of the bills before you today, S. 2888, contains authorizations to appropriate $40 million for capital improvements to the electric power generation and water distribution and storage systems, and $3 million for the planning and construction of two juvenile pretrial detention facilities. Last Thursday, the House approved H.R. 5139 which contains similar authorization.

Of the $40 million for water and power improvements, the territory intends to utilize $28 million over 4 years to acquire new power generating equipment and to undertake a major overhaul of the existing equipment. These expenditures would enable the Virgin Islands Water and Power Authority to achieve its goal of providing reliable and reasonably priced electric power for our residents and businesses. The funds will not only help the territory to achieve a standard of reliability more nearly equal to that of other U.S. communities, it will also help us to attract new industries which are so essential to achieving a more balanced economy.

The $12 million balance of the funding would also be used over 4 years to help replace the territory's aging and corroded public water distribution system and to improve our water storage capability.

I have been informed that the local government has contributed some $40.3 million over the past 5 years to the Virgin Islands Water and Power Authority in order to remedy water shortages and improve the operations of the power system. Over the past 2 years, the water and power authority has begun to operate three new water desalination plants. It has acquired two 20 megawatt gas turbines, and it has begun to overhaul the other major components of the power system, using locally provided funds.

The Virgin Islands Government has shouldered as much of the burden of providing this sorely needed infrastructure as it can, and Federal help is now essential if there is to be a permanent solution to our water and power problems. I urge this committee's approval of these vitally needed funds.

The other authorization contained in S. 2888 is for $3 million for the planning and construction of two juvenile pretrial detention centers, one for St. Thomas and one for St. Croix. These centers are designed to meet stringent Federal standards, and would play a key role in curbing crime by youthful offenders. According to the territory's uniform crime reporting statistics, youth crime accounted for more than 50 percent of major crime apprehensions in 1981. Therefore, Federal assistance in the construction of these pretrial centers would permit us to strike a blow in the fight against crime in our community while at the same time providing an atmosphere designed to address in a positive way the needs of youthful offenders.

I strongly recommend that this committee join the House of Representatives in approving this authorization as well.

The bill containing the authorizations would also provide an annual report on the state of the insular areas be prepared by the President and submitted to the Congress. This provision is similar to a bill now pending in the House Insular Affairs Subcommittee, H.R. 6780, which I supported in testimony before that subcommittee last month. Approval of this provision would help us to emphasize the message that this committee has been sending to the administration for some time; namely, that the economic and social well-being of the territories are of prime importance to the entire Nation, and I strongly endorse its passage.

I would also like to take this opportunity to emphasize one type of problem we presently have over which we have no control. That problem is the reduction in local income tax revenues due to Federal income tax cuts amounting to a total of some $35 to $40 million projected for fiscal year 1982 and 1983.

This situation is creating severe budgetary difficulties. I appreciate the efforts of this committee in helping us resolve our problem, and I am hopeful that funds can be appropriated to ease this problem as has been done in the past.

Also before the committee today is S. 2729, an important reform measure which has its roots in the fourth proposed constitution of the Virgin Islands. Approval of this bill would be recognition by the Congress of the desire of the people of the Virgin Islands to continue to move in the direction of increased autonomy and self-determination. Most important, the bill provides the Virgin Islands with authority to establish a truly local court system on both the trial and appellate levels rather than continuing to rely on the Federal district court for determining many local matters.

Among other provisions it also would repeal obsolete provisions of the Organic Acts. I generally endorse the objectives which this bill would achieve, but I recommend changes in certain of its provisions in order that it might more nearly reflect the general views of the people of the territory.

At Senator Weicker's request, the Department of the Interior solicited my views and those of other interested Virgin Islanders in drafting this measure. While some of those views were reflected in S. 2729, the administration is not endorsing other important changes in the legislation which we have advocated. In an August

18, letter to the chairman of the House Subcommittee on Insular Affairs, the Assistant Secretary for Territorial and International Affairs analyzed and rejected several proposed changes in the administration draft of this bill, changes which I strongly urge you to adopt.

First, the administration advocates giving exclusive jurisdiction to the district court of the Virgin Islands over all civil and criminal cases regarding the income tax laws of the Virgin Islands. I oppose this change for two reasons. First, the Virgin Islands income tax law, although a mirror of the Federal law, is considered a local tax. Therefore, continued local administration of the tax law is appropriate and should be maintained at the present level or increased rather than cut back as proposed by the administration.

Second, at present, the attorney general of the Virgin Islands prosecutes criminal income tax cases in the territorial court within jurisdictional limits because the attorney general does not have the authority to conduct criminal prosecutions in the district court without the authority of the U.S. attorney. This proposed change is likely to hinder criminal tax law enforcement in the territory.

However, if section 22 of the revised Organic Act were to be amended to permit the attorney general of the Virgin Islands to prosecute criminal cases, including criminal tax cases, in the Federal district court without the need for the U.S. attorney's consent, then this interest would be removed and I could consider supporting this provision of the bill.

The administration next dismisses as unnecessary a change suggested in the proposed section 22(b) of the revised Organic Act contained in the bill. I believe this change is required in that the Virgin Islands would be permitted through enactment of a local statute to decide whether the local government will have to bear the increased cost involved when matters now subject to the concurrent jurisdiction of the local and Federal courts become the exclusive province of the local courts.

Third, the administration rejects the proposal endorsed by Delegate de Lugo and by the local judiciary to eliminate language from the revised Organic Act which permits Congress to annul acts of the local legislature. In my view, the U.S. Constitution's supremacy clause adequately covers this issue. The change should be made at this time as an indication of Federal support for increased local autonomy.

Finally, the administration opposes the deletion from the revised Organic Act of the McCarthy era loyalty oath requirement imposed on local government employees. While I do not oppose a loyalty oath, I believe that the advisability and contents of the loyalty oath should be left for local determination.

I also advocate several other changes to S. 2729 similar to the suggestions I made last month regarding H.R. 6859. These include reducing to 5 years the 15-year transition period during which appeals from the local appellate court will have to be made to the U.S. Court of Appeals for the Third Circuit; adopting the provisions of the proposed fourth Virgin Islands constitution regarding the recall of public officials; repealing section 4 of the act of March 3, 1917; and retaining section 2 of the 1918 act and Section 10 of the Organic Act of 1936.

I have made available to the committee copies of my recent testimony before the House Insular Affairs Subcommittee which fully explain my reasons.

I wish to thank Senator Weicker, Congressman de Lugo, and the members of this committee and personal staff for their support of this bill, and I would ask that it be approved by the committee with the changes I have outlined.

Another bill the committee is considering today, S. 2633, a bill that would significantly alter the role of the U.S. Government comptrollers in the territory—as I have supplied the committee with copies of my testimony on the identical House version of this bill, H.R. 6680, I would just briefly summarize them here.

The CHAIRMAN. Let me interrupt at this point to indicate that those statements that have been provided to the committee will be made a part of the record in this proceeding.

Governor LUIS. Thank you, sir.

The CHAIRMAN. Thank you.

Governor LUIS. I would like to comment on S. 2019, a bill which would authorize the Governor of the Northern Marianas to exempt certain entities operating in the territory from the requirements of the Clean Air Act.

Quite often the Federal regulatory standards applicable to the 50 States do not make sense when applied to offshore insular territories. This is true not only in the Northern Marianas but in the Virgin Islands, and it is equally true with regard to clean water standards as well as clean air standards. When mainland standards are applied to the territories, often the result is a requirement for costly antipollution equipment which may not be needed for protecting the insular environment.

In cases where there is a conflict between the EPA and a person or corporation which is required to obtain antipollution equipment in a territory, the EPA and other parties should prepare technical studies for the review of the territorial Governor who would be given the opportunity to resolve the conflict. With the aid of the EPA's technical expertise and the Governor's knowledge of the impact of the affected business on the territory's economy and environment, this type of situation could be more easily resolved than under the present regulatory framework as it applies to the territories.

While I am suggesting this procedure, I would like to take this opportunity to praise the EPA for their laudable efforts at protecting our environment. I understand that last week the House added the Virgin Islands to H.R. 5139, the Omnibus Territories bill, which would have a similar effect in these and certain EPA regulatory requirements as they apply to the Virgin Islands.

I request that this committee adopt such a provision when it reports out its version of the Omnibus Territories bill.

Again, Mr. Chairman, I wish to thank you and the members of this committee for your continuing support and sponsorship of measures to help the Virgin Islands.

[The prepared statement of Governor Luis follows:]

STATEMENT OF

HONORABLE JUAN LUIS, GOVERNOR
UNITED STATES VIRGIN ISLANDS

Mr. Chairman, distinguished members of this committee, thank you for this opportunity to appear before you to comment on several proposed bills which will affect the Virgin Islands. It is always a pleasure to work together with you to find solutions to the unique problems faced by the Virgin Islands.

First I would like to discuss two matters of utmost importance for improving the economic health and maintaining the social stability of the Virgin Islands. One of the bills before you today S. 2853, contains authorizations to appropriate $40 million dollars for capital improvements to the territory's power generation and water distribution and storage systems and $3 million dollars for the planning and construction of two juvenile pretrial detention facilities. Provision has already been made for these expenditures in the House Interior and Insular Affairs Committee budget.

Of the $40 million dollars for water and power improvements, the Territory intends to utilize $28 million dollars over four years to acquire new power generating equipment and to undertake a major overhaul of existing equipment. These expenditures would enable the Virgin Islands Water and Power Authority to achieve its goal of providing reliable and reasonably priced electric power for our residents and businesses. The funds will not only help the Territory to achieve a standard of reliability more nearly equal to that of other United

States communities, they will also help us to attract new industries which are so essential to achieving a more balanced economy.

The $12 million dollar balance of the funding would also be used over four years to help replace the Territory's aging and corroded public water distribution system and to improve our water storage capability. Through commitments for grants and loans from HUD, EDA, and FmHA, the federal government has already permitted us to begin work on this project. A grant of $500,000 is currently being used to identify leaks in the water distribution system. Of the total estimated cost of $15.5 million dollars budgeted for the effort, the Virgin Islands government would contribute $2.5 million dollars and EDA and FmHA a total of $1 million dollars.

In addition to the proposed additional local expenditure of $2.5 million dollars for the water system repairs, I have been informed that the local government has contributed some $40.3 million dollars over the past five years to the Virgin Islands Water and Power Authority in order to remedy water shortages and improve the operations of the power system. Over the past year the Territory has begun to operate three new water desalination plants producing a total of nearly 4 million gallons of water per day and we have arranged to purchase three smaller water plants which will provide an additional 1.65 million gallons per day. Also, the Water and Power Authority acquired two 20 megawatt gas turbines and it has begun to overhaul the other major components of the power system using locally provided funds.

My administration's commitment to improving water and power goes even further than these efforts however, several months ago I proposed a bill to the Virgin Islands Legislature to free up about $2 million dollars per year for the next several years to provide essential operating capital to the Water and Power Authority (See Exhibit A). Funds provided by the enactment of this local measure together with collections from the maintenance surcharge recently imposed by the Authority will go a long way toward solving its chronic financial difficulties.

The Virgin Islands Government has shouldered as much of the burden of providing this sorely-needed infrastructure as it can and federal help is now essential if there is to be a permanent solution to our water and power problem. I have provided the committee with additional documents further detailing and justifying these needs (See Exhibits B, C and D) and I urge this committee's approval of these vitally-needed funds.

The other authorization contained in S.2855 is for $3 million dollars for the planning and construction of two juvenile pretrial detention centers, one for St. Thomas and one for St. Croix. These centers, designed to meet stringent federal standards, would play a key role in curbing crime by youthful offenders. According to the Territory's Uniform

Crime Reporting statistics, youth crime accounted for more than 50 percent of major crime apprehensions in 1981; therefore federal assistance in the construction of these pretrial centers would permit us to strike a telling blow in the fight against crime in our community, while at the same time providing an atmosphere designed to address in a positive way the needs of the youthful offender. I have also provided the Committee with additional justification for this authorization (See Exhibits E, F and G) and I strongly recommend its approval as well.

The bill containing the authorizations would also provide that an annual report on the state of the insular areas be prepared by the President and submitted to Congress. This provision is similar to a bill now pending in the House Insular Affairs Subcommittee, H.R. 6780, which I supported in testimony before that subcommittee last month. The Senate version adds Puerto Rico to the list of areas to be contained in the report, a change which I support. Mr. Chairman, there can be no question that such an annual report will be helpful to this committee and to the entire Congress in fulfilling its Constitutional responsibilities to shape federal policy toward the territories. Approval of this provision will help to emphasize the message that this Committee has been sending to the administration for some time, namely that the economic and social well-being of the territories are of prime importance to the entire nation; I strongly endorse its passage.

Also before the Committee today is S. 2729, an important reform measure which had its roots in the fourth proposed Constitution of the Virgin Islands. Last fall, Senator Lowell Weicker introduced S. 1674 which was originally intended to make the necessary alterations in the Revised Organic Act to accomodate the Constitution. When the proposed Constitution failed to be approved by the voters, the bill was reexamined and Senator Weicker requested that it be redrafted with input from the administration and the territories, with a view toward making some progressive changes in line with the philosophy of increased autonomy for the Territories. The result is S. 2729. If passed by Congress, this bill would be a recognition of the desire of the people of the Virgin Islands to continue to move in the direction of increased autonomy and self-determination.

Most important, the bill provides the Virgin Islands with authority to establish a truly local court system on both the trial and appellate levels rather than continuing to rely on the federal district court for determining many local matters. Among other provisions, it also would repeal obsolete provisions of the Organic Acts.

I generally endorse the objectives which this bill would achieve but I recommend changes in certain of its provisions in order that it might more nearly reflect the views of those in the Territory who have commented on it. At Senator Weicker's request, the Department of Interior solicited my views, and those of other Virgin Islanders, in drafting this measure. While some of those views were reflected in S. 2729, the administration is not endorsing other important changes in the legislation which we have advocated. In an August 18 letter to the Chairman of the House Subcommittee on Insular Affairs, the Assistant Secretary for Territorial and International Affairs analyzed the changes in the administration draft which were included by V.I. Delegate Ron deLugo in his version of this legislation, H.R. 6859. In Items 1, 3, 4 and 8 of his letter, the Assistant Secretary rejected several proposed changes in the administration draft which I strongly urge you to adopt.

In Item 1 the administration advocates giving exclusive jurisdiction to the District Court of the Virgin Islands over all civil and criminal cases regarding the income tax laws of the Virgin Islands. I oppose this change for two reasons. First, the Virgin Islands income tax law, although a "mirror" of the federal law, is considered a local tax. Therefore continued local administration of the tax law is appropriate and should be maintained at the present level, or increased, rather than cut back as proposed by the administration. Second, at present the Attorney General of the Virgin Islands prosecutes criminal income tax cases within the jurisdictional limits of the Territorial Court in that forum. Because the

Attorney General does not have authority to conduct criminal prosecutions in the District Court without permission from the U.S. Attorney, this proposed change is likely to hinder criminal tax law enforcement in the Territory.

In Item 3 the administration dismisses as "unnecessary" a change I suggested in the proposed Section 22(b) of the Revised Organic Act contained in the bill. I believe this change is required in order to clarify that the Virgin Islands will be permitted, through enactment of a local statute, to decide when the local government will have to bear the increased costs involved when matters now subject to the concurrent jurisdiction of the local and federal courts become the exclusive province of the local courts.

In Item 4 the administration rejects a proposal endorsed by Delegate deLugo and by the local judiciary, to eliminate language from the Revised Organic Act which permits Congress to annul acts of the local legislature. In my view the U.S. Constitution's supremacy clause adequately covers this issue. The change should be made at this time as an indication of federal support for increased local autonomy.

In Item 8, the administration opposes deletion from the Revised Organic Act of the McCarthy-era loyalty oath requirement imposed on local government employees. While I do not oppose a loyalty oath, I believe that the advisability and contents of the loyalty oath should be left for local determination.

I also advocate several other changes to S. 2729, similar to the suggestions I made last month regarding H.R. 6859. These include reducing to five years the fifteen year transition period during which appeals from the local appellate court will have to be made to the U.S. Court of Appeals for the Third Circuit; adopting the provisions of the proposed fourth V.I. Constitution regarding the recall of public officials; repealing Section 4 of the Act of March 3, 1917; and retaining Section 2 of the 1917 Act and Section 10 of the Organic Act of 1936. I have made available to the committee copies of my recent testimony before the House Insular Affairs Subcommittee which fully explains my reasons (See Exhibit H).

I wish to thank Senator Weicker, Congressman deLugo, and the members of their Committee and personal staffs for their support of this bill and I would ask that it be approved by the committee with the changes I have outlined.

Another bill the Committee is considering today is S. 2633, a bill that would significantly alter the role of the U.S. government comptrollers in the Territories. As I have supplied the Committee with copies of my testimony on the identical House version of this bill, H.R. 6680 (See Exhibit H), I will just briefly summarize them here. Basically I support the bill, but I would ask that approval be delayed until funds are authorized and appropriated for technical assistance which would permit the territories to competently assume the greater auditing and reporting role envisioned for them under the

Comptroller General's Report which formed the basis for this bill. Otherwise I do not believe that the other worthy objectives of the Comptroller General's Report and of the bill can be achieved. I would also request that the bill be amended to conform with my firm belief that in the context of the other changes proposed by this legislation, it should also provide that the U.S. government comptroller's responsibility will extend to auditing the use of federal funds only, and that the audit function for local funds will be the sole responsibility of the local government. This change is consistent with increased territorial autonomy and with the revised role of the federal comptroller embodied in this measure. I would note that local legislation has been enacted to establish a local auditor general whose role would be to audit the expenditure of local funds.

Finally I would like to comment on S.2090 a bill which would authorize the Governor of the Northern Marianas to exempt certain entities operating in the Territory from the requirements of the Clean Air Act.

Quite often the federal regulatory standards applicable to the fifty states do not make sense when applied to offshore insular territories. This is true not only in the Northern Marianas, but in the Virgin Islands; and it is equally true with regard to clean water standards as well as clean air standards. When mainland standards are applied to the Territories often the result is a requirement for costly anti-pollution equipment which may not be needed for protecting the insular environment. In cases where there is a conflict between the EPA and a person or corporation which is required to obtain anti-pollution equipment in a territory, the EPA and the other party should prepare technical studies for the review of the territorial governor who would be given the opportunity to resolve the conflict. With the aid of the EPA's technical expertise, and the Governor's knowledge of the impact of the affected business on the territory's economy and environment, this type of situation could be much more easily resolved than under the present regulatory framework as it applies to the territories. While I am suggesting this procedure, I would like to take this opportunity to praise the EPA for their laudable efforts at protecting our environment.

I would request that the Committee inquire of the Environmental Protection Agency whether there is any reason that the other territories could not be included in this legislation, whether the legislation could not be expanded to include the Clean Water Act, and whether a procedure such as the one I have described could not be utilized.

Again, Mr. Chairman, I wish to thank you and the members of this committee for your continuing support and sponsorship of measures to help the Virgin Islands.

EXHIBIT A

THE VIRGIN ISLANDS OF THE UNITED STATES
OFFICE OF THE GOVERNOR
CHARLOTTE AMALIE, ST. THOMAS 00801

April 22, 1982

Honorable Ruby M. Rouss
President of the 14th Legislature
of the Virgin Islands
Charlotte Amalie, Virgin Islands

Dear Madam President:

Transmitted herewith is a recommended bill, "To authorize appropriations from the Internal Revenue Matching Fund to provide essential financial assistance to the Virgin Islands Water and Power Authority".

The financial difficulties and pleas for financial assistance of the Virgin Islands Water and Power Authority (WAPA) are well known. This recommended bill would lend substantial governmental financial assistance to WAPA in two significant areas.

Section 1, subsection (a) would authorize the appropriation of an aggregate amount of $5 million over the next 5 fiscal years from the Internal Revenue Matching Fund to be awarded as grants to WAPA for the exclusive purpose of aiding in the retirement of its bonded indebtedness. That obligation, including principal and interest, is currently about $5.2 million annually.

Section 1, subsection (b) would pave the way to relieving the Authority of its existing obligation to pay $8.5 million in bond anticipation notes to Chase Manhattan Bank. It is this "short term" obligation for which WAPA must now negotiate a "roll-over" every six months and pay an annual interest bill of approximately $935,000. This relief would be obtained by the negotiation of a long term general obligation bond "sale" to Chase by the Government in the principal amount of $8.5 million, with a commensurate cancellation of the WAPA indebtedness to Chase Bank. Section 1, subsection (b) would authorize appropriations from the Internal Revenue Matching Fund to pay the resulting annual bonded indebtedness. Public Law 94-392 (48 U.S.C.§1574a) provides the authority for this undertaking. Chase Manhattan Bank has conveyed its approval of this procedure, subject of course to the details of the negotiation.

This bill is a key factor in the projected financial recovery of the Water and Power Authority. When coupled with WAPA's hoped for rate relief from the Public Services Commission and the well documented request for $28 million in federal grants for capital improvements over the next 4 fiscal years, there is cause for optimism that the Authority will put its financial house in order, institute long needed repairs and improvements, institute and observe proper maintenance practices and, as a result, deliver reliable supplies of water and power to its customers at rates which are more than competitive with similarly situated utilities. Significant strides have already been taken in that regard over the course of the past four years. When full WAPA recovery is achieved, the resulting improvement in the quality of our lives and the increased potential for attracting new industries to our shores will more than justify the battle now being waged by my administration to that end.

The Executive Director of the Water and Power Authority will be available to the Legislature and its committees to respond to questions on this bill. As always, I welcome any improvements that the Legislature may see fit to make.

Your prompt and favorable consideration of this measure would be appreciated.

Sincerely yours,

Juan Luis

JUAN LUIS
Governor

Enclosure

BILL NO. ____________

FOURTEENTH LEGISLATURE OF THE VIRGIN ISLANDS
OF THE UNITED STATES
Regular Session
1982

To authorize appropriations from the Internal Revenue Matching Fund to provide essential financial assistance to the Virgin Islands Water and Power Authority

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PROPOSED BY THE GOVERNOR

BE IT ENACTED by the Legislature of the Virgin Islands:

Section 1. There is authorized to be appropriated from the Internal Revenue Matching Fund, created by section 28(b) of the Revised Organic Act of the Virgin Islands:

(a) the sum of $1,000,000 for each of the five fiscal years commencing October 1, 1982 and ending September 30, 1987, which sum would be utilized in each of these fiscal years as a grant to the Virgin Islands Water and Power Authority for the exclusive purpose of aiding retirement of the bonded indebtedness of the Authority;

(b) pursuant to P.L.94-392 (1976)(48 U.S.C.§1574a), such amount as may be necessary for the fiscal year in question for the payment of principal and interest on a long term general obligation of the Government of the Virgin Islands drawn in favor of Chase Manhattan Bank, N.A. This obligation will be in the principal amount of $8,500,000 and, when issued, will cancel the short term obligation now owed to Chase Manhattan Bank, N.A. by the Virgin Islands Water and Power Authority as evidenced by bond anticipation notes in the same principal amount. The general obligation shall bear interest at a lawful rate to be negotiated between the parties.

EXPLANATION

The financial difficulties and pleas for financial assistance of the Virgin Islands Water and Power Authority (WAPA) are well known. This recommended bill would lend substantial governmental financial assistance to WAPA in two significant areas.

Section 1, subsection (a) would authorize the appropriation of an aggregate amount of $5 million over the next 5 fiscal years from the Internal Revenue Matching Fund to be awarded as grants to WAPA for the exclusive purpose of aiding in the retirement of its bonded indebtedness. That obligation, including principal and interest, is currently about $5.2 million annually.

Section 1, subsection (b) would pave the way to relieving the Authority of its existing obligation to pay $8.5 million in bond anticipation notes to Chase Manhattan Bank. It is this "short term" obligation for which WAPA must now negotiate a "roll-over" every six months and pay an annual interest bill of approximately $935,000. This relief would be obtained by the negotiation of a long term general obligation bond "sale" to Chase by the Government in the principal amount of $8.5 million, with a commensurate cancellation of the WAPA indebtedness to Chase Bank. Section 1, subsection (b) would authorize appropriations from the Internal Revenue Matching Fund to pay the resulting annual bonded indebtedness. Public Law 94-392 (48 U.S.C.§1574a) provides the authority for this undertaking. Chase Manhattan Bank has conveyed its approval of this procedure, subject of course to the details of the negotiation.

This bill is a key factor in the projected financial recovery of the Water and Power Authority. When coupled with WAPA's hoped for rate relief from the Public Services Commission and the well documented request for $28 million in federal grants for capital improvements over the next 4 fiscal years, there is cause for optimism that the Authority will put its financial house in order, institute long needed repairs and improvements, institute and observe proper maintenance practices and, as a result, deliver reliable supplies of water and power to its customers at rates which are more than competitive with similarly situated utilities. Significant strides have already been taken in that regard over the course of the past four years. When full WAPA recovery is achieved, the resulting improvement in the quality of our lives and the increased potential for attracting new industries to our shores will more than justify the battle now being waged by the Luis administration to that end.

The Executive Director of the Water and Power Authority will be available to the Legislature and its committees to respond to questions on this bill. As always, the Governor welcomes any improvements that the Legislature may see fit to make.

EXHIBIT B

CAPABILITY STATEMENT

Agency: Department of the Interior/Territorial and International Affairs

Appropriation: Administration of Territories

Activity: U.S. Virgin Islands

Proposed Amendment: $40,000,000 for V.I. Water and Power Authority and the Department of Public Works (This capability statement is for $28,000,000 for V.I. Water and Power Authority)

Current Program: The Virgin Islands Water and Power Authority was created by the Virgin Islands Legislature in 1964. The authority owns and operates electric power generation and distribution facilities on St. Thomas and St. Croix, which facilities are not physically interconnected. The only other island of notable size, St. John, which lies four miles east of St. Thomas, normally receives electric power transmitted from St. Thomas by underwater cable. A unit, for use during emergencies, is installed on St. John. The Authority is the only producer which distributes and sells electric power in the Virgin Islands, and it serves residential, commercial, industrial and street lighting customers as well as the Government of the Virgin Islands. A limited number of industries generate part of all of their own power requirements. The Authority has approximately 38,000 customers.

The Authority also produces water as part of its Water System through a desalinization or distillation process, which is carried on in conjunction with its steam electric power generation. The Department of Public Works of the Virgin Islands purchases water produced by the Authority.

In past years, a number of engineering reports commissioned by both the Authority and the Virgin Islands Government have focused on certain conditions of disrepair which existed with respect to the Electric System as adversely affecting the reliability of electric service of the Authority. Among those factors to which such engineering reports referred were the lack of a maintenance management program, the need for employee training programs and for a comprehensive preventative maintenance program, and the need for major repair and overhaul work with respect to some of the equipment of the Authority's power production facilities.

The Authority has since the issuance of these reports instituted an extensive repair and preventative maintenance program with respect to its facilities and has sought to follow many of the recommendations set forth in such reports.

Since 1978, the Virgin Islands Government has contributed grants to the Authority for the purpose of acquiring new generating equipment and to undertake major overhaul of existing plants of the Electric System. Additionally, to remedy water shortages and operational difficulties, the Authority has added production capacity to the Water System by constructing new desalinization plants with grant monies from the Virgin Islands Government. Those grants have amounted to $30,853,000.

With those funds the Authority acquired two 20 megawatt combusion (gas) turbines, one each located on the islands of St. Thomas and St. Croix, to provide stationary power while major overhaul work is being accomplished on existing equipment. Total overhaul of an 18 megawatt steam generator on St. Croix has been completed and partial overhaul to allow an 18 megawatt steam generator on St. Thomas to be operable has been accomplished. Overhaul of a 7.5 megawatt steam generator is scheduled for this fiscal year.

Three desalination plants have been constructed, two on St. Thomas, one one St. Croix. Each plant has a rated capacity of 1.25 MGD and is in production. Additionally, one desalination plant on St. Croix was retrofitted to produce 1.0 MGD. All funds have been utilized and the V.I. Government is not in a position to give additional financial assistance.

Amount Budgeted FY '83: NONE

Feasibility: The objectives of the Authority are to have electric power generating and distribution equipment in a reliable and adequate status, optimizing economic utilization of available fuel sources to meet present and future demands. The same holds for the Water System.

The major rehabilitation program of baseline electric generating equipment begun by the Authority is intended to achieve those objectives. However, without additional external funding, the increased reliability and efficiency achieved to date could rapidly diminish.

If the increase is granted, the Authority will be able to complete the major overhaul of its equipment in a timely and scheduled manner. The program contemplates overhaul of five electric power generators which will then have the rated capacity of 78 megawatts. It will also be able to acquire equipment for the electric distribution system and effect repairs to those systems on all three islands.

Moreover, the Authority will be able to make improvements to both the electric and water systems which will result in operational savings from lower fuel costs, less line losses and meet future water demands.

In addition to the above mentioned, the Authority will acquire a new standby diesel generator for the island of St. John, an underwater electric distribution cable to that island, an electric substation on St. Thomas and a desalination plant for St. Thomas.

Additionally, certain modifications and conversions of equipment such as waste heat recovery boilers and fuel system conversions will increase efficiency and result in fuel savings.

The first order of priority is to complete the overhaul of three electric generating units, two on St. Thomas and one on St. Croix, and to acquire and install the standby generator and underwater electric distribution cable to St. John and construct the electric distribution substation on St. Thomas.

The second order of priority is for acquisition of distribution equipment and for improvements to the electric distribution system on all three islands, acquisition of a salt water reverse osmosis plant for St. John and conversion of combustion (gas) turbines to burn lower cost fuels.

The third priority is to make improvements to generating plants so as to further achieve operating efficiencies.

Capability:

CAPITAL EXPENDITURES

2.5 MW Diesel Generator	$ 1,000,000
Underwater Electric Distribution Cable	1,500,000
34.5 KW Distribution Substation	500,000
Saltwater Reverse Osmosis Plant	1,000,000
Combustion (Gas) Turbine Conversions	1,760,000
Distribution System Equipment	662,000
Improvements to Electric Distribution System	4,276,000
Waste Heat Recovery Boilers	4,444,000
Desalination Plant	7,000,000
SUB-TOTAL.	$22,142,000

MAJOR OVERHAUL

Electric Generating Plants	$ 5,858,000
TOTAL	$28,000,000

JUSTIFICATIONS

Fiscal Year 1983

The expenditures above are necessary and justifiable for the following:

The Island of St. John located about four miles to the east of St. Thomas is provided electrical service via an underwater cable with a standby diesel generator in the event of power interruption on the St. Thomas end.

The existing cable, installed some twenty seven years ago, suffers from recurring damage due to age and results in excessive repair costs; it needs to be replaced. The generator, first installed in 1967 and last overhauled in 1974, is rated at 2 MW but delivers at 1.5 MW. It needs overhaul or replacement. Even if overhauled at a cost of over one quarter million dollars, its capacity is insufficient to carry load for the entire island in the event of a cable failure. Moreover, with the completion of the new health facility on St. John and projected additional resort and housing development, a new and larger capacity standby system is essential.

The 34.5 KV substation is being installed as the initial part of a 34.5 KV subtransmission system designed to upgrade the entire distribution system. The substation will result in a reduction in line losses, improve system capacity, enhance load switching capability and improve system conditions such as voltage drop and flutter.

In early 1981, the Authority began a major rehabilitation program of its baseline electric generating equipment to bring the system to acceptable levels of reliability and efficiency. The expenditures, based on consultants' recommendations in October 1980, were projected at $14,000,000 over a three to five-year period. To date slightly over $7,000,000 has been expended from funds made available by the Virgin Islands Government and the Authority's revenues. However, that program is threatened by non-availability of funds from both of these sources, and the increased reliability and efficiency achieved to date could rapidly diminish if additional funding from other sources are not forthcoming. The expenditures anticipated in this year will result in a reduction of production costs of about three million dollars annually. More importantly, the attendant lowered rate to the consumer via a fuel adjustment clause, and a more reliable and efficient system will encourage investment towards achieving a more diversified economy.

BASE LINE EQUIPMENT OVERHAUL (MAJOR)

St. Thomas: Steam Turbine (35 mw)

Unit #13 is the largest and most efficient unit in the system but at the present time the unit is only capable of producing 25 MW due to its deteriorated condition. The preheater baskets require replacing and complete retubing of the boiler is necessary to restore the unit to full load reliable service. The steam turbine requires inspection, adjustment of steam seals and wheel diaphrams and other turbine overhaul.

St. Thomas: Steam Turbine (18 MW)

During the recent overhaul of unit #1 it was found that the second thru fifth stage buckets must be replaced because of severe wear and pitting.

The economizer in the boiler section was found to be eroded to the point that it requires complete replacement.

St. Croix: Gas Turbine (15 MW)

This unit has been out of service because of generator grounds and faults. The generator will require complete factory rewinding and the jet engines require factory rebuild. These repairs will re-establish this unit as a reliable emergency and peak load unit.

Fiscal Year 1984

On the Island of St. John, the principal sources of public water supply are from a series of wells which feed water to Cruz Bay and supplemented by water barged from St. Thomas. The Department of Conservation and Cultural Affairs, in developing its Comprehensive Water Resources Management Plan has recommended a 100,000 GPD reverse osmosis plant for St. John to eliminate the need for barging and assure an adequate supply of potable water. The expenditure breakdown for capital expenditures includes an amount of $1.0 million to provide for the purchase and installation of the plant.

Monies for improvements to the Electrical Distribution System are to effect reduction in line loss and convert major parts of the system to 3 phase. Included will be reconductoring of major distribution feeders, addition of capacitors for power factor correction and extension of 3 phase power to developing areas of the Islands. Much of the present system is over fifteen years old and has had no significant improvement in some 10 years due to the lack of capital funds. The system, however, continues to grow and the high line losses and poor system regulations are indications of the inadequacies of the system. It is anticipated that these funds will result in reducing the excessive line losses of some 14% down to a more realistic 6% by 1985 resulting in significant savings to consumers.

Similarly, equipment, rolling stock, have been in service for as many as ten years and are not in operating condition to meet the high construction demands.

The Authority unlike many stateside utilities must do all line construction. In order to address the heavy construction demands new and better equipment is necessary. The funds will be used to acquire items such as heavy duty diggers, digger derricks, bucket trucks and air compressors.

As an example, a heavy duty digger, needed because of local soil conditions costs approximately $100,000.

The original instrumentation and controls on most of the Authority's generating plants have become obsolete and replacements and/or spare parts are difficult to obtain. When obtainable, it is at exorbitant costs or time delays. The safe and reliable operations of those plants are contingent on dependable, reliable instrumentation and controls.

Fiscal Year 1985

At the present time, the combustion (gas) turbines in the system burn No. 2 fuel oil. Conversion of those units to burn lower cost No. 6 fuel oil will result in lower operating costs to the Authority. Other modifications to the combustion turbines such as adding waste heat recovery boilers effectively making them combined cycle units, will yield additional steam capacity and flexibility for the production of water.

Fiscal Year 1986

By the years 1986-1987, expansion of the potable water distribution system on St. Thomas will result in a demand for between 4.7 to 5 MGD of water. By that time the Authority will have retired a small desalination plant which was initially commissioned in 1968. It is intended to replace that unit, presently producing 0.5 MGD with a plant capable of producing 1.25 MGD.

If the work contemplated with these funds is accomplished, particularly the overhaul and conversions, production costs savings will be approximately $3,000,000 annually.

Outlay Effect:

Fiscal Year 1983

CAPITAL EXPENDITURES

Island		Equipment	Estimated Cost
St. John	-	2.5 Diesel Generator	$1,000,000
St. John	-	Underwater Distribution Cable	1,500,000
St. Thomas	-	34.5 KV Substation	500,000
		Sub-Total	$3,000,000

BASE LINE EQUIPMENT OVERHAUL (MAJOR)

St. Thomas	-	Steam Turbine (35 MW)	$1,700,000
St. Thomas	-	Steam Turbine (18 MW)	800,000
St. Croix	-	Gas Turbine (15 MW)	1,500,000
		Sub-Total	$4,000,000
		TOTAL. . .	$7,000,000

Fiscal Year 1984

CAPITAL EXPENDITURES

Island		Equipment	Estimated Cost
St. John	-	Seawater Reverse Osmosis Plant (100 GPD)	$1,000,000
St. Thomas and St. Croix	-	Conversion of Gas Turbine to burn lower cost fuel	1,760,000
St. Thomas, St. John & St. Croix	-	Equipment for Distribution System	662,000
St. Thomas, St. John & St. Croix	-	Improvements to Electric Distribution System	1,720,000
DE Superheater - St. Croix	-		345,000
		Sub-Total	$5,487,000

MAJOR REPAIRS

		Instrumentation	$ 875,000
St. Thomas	-	Steam Unit (8.5 MW) Diesel Unit (3 MW)	638,000
		Sub-Total	$1,513,000
		TOTAL. . .	$7,000,000

Fiscal Year 1985

CAPITAL EXPENDITURES

Island		Equipment	Estimated Cost
St. Thomas - St. Croix	-	Waste Heat Recovery Boilers	$4,444,000
St. Thomas - St. Croix	-	Improvements to Electric Distribution System	2,556,000
		TOTAL. . .	$7,000,000

Fiscal Year 1986

CAPITAL EXPENDITURES

Island		Equipment	Estimated Cost
St. Thomas	-	One (1) 1,200,000 GPD Desalination Plant	$7,000,000

EXHIBIT C

CAPABILITY STATEMENT: WATER SYSTEMS

Agency/Bureau: Department of the Interior/Territorial and International Affairs

Appropriation: Administration of Territories

Activity: Government of the Virgin Islands

Proposed Amendment: $12,000,000 to the Department of Public Works for construction and development of Water distribution system, to be funded incrementally through Fiscal Year 1982.

Current Program: Through a $500,000 grant from HUD, engineering studies for the development of master plan for the entire territory is underway and will be completed in October 1982. Upon completion, the FmHA and EDA are committed to $500,000 grant each, plus low interest loan of $2,500,000, for implementation of the plan in the rural community. Tests are currently being conducted to detect leaks in the distribution system which amounts to 30% of water loss.

Amount Budgeted FY 1982: None

Feasibility: The present water distribution system on all three Islands were installed more than 30 years ago and has deteriorated through normal erosion over the years. Most of all this existing piping, in addition to their eroded condition, are too small to withstand the pressure of Service demands. This condition leads to constant live breakages resulting in a 30% water loss and $12,000.00 daily in lost revenues. The entire distribution system must be replaced.

Additionally, present storage tanks are corroded and major repair work is a priority. Added storage facilities must be constructed at strategic locations to gravity-feed the expanded residential requirements.

The requested funds are urgently needed to address this most serious problem. No authorization exists to provide required funding and the Virgin Islands is incapable of providing all the financing necessary to accomplish the work. The government is presently subsidizing the system by underwriting the cost of water lost through leakage, amounting to more than $4.0 million annually.

Capability: The total cost of replacing the existing distribution system on the three islands is estimated at $15.5 million. Funding source is identified as follows: $12.0 federal grant; $2.5 V.I. Government contribution; and $1.0 grant from FmHA-EDA.

Construction schedule and financing requirements are as follows:

Fiscal 1983 -- $3.0 million		
Phase I -	Replacing water lines in Charlotte Amalie 1/	$1.5
	New 5 mg Storage Tank Christiansted 2/	1.5
Fiscal 1984 -- $3.0 million		
Phase II -	Replacing water lines in Charlotte Amalie	$2.0
	Repairs to storage tank in Christiansted	.5
	Extension water lines in Cruz Bay, St. John	.5
Fiscal 1985 -- $3.0 million		
Phase III -	Replacing water lines in Charlotte Amalie	$2.0
	Development Raw Water Collection System St. Croix	.5
	Replacement water lines in Frederiksted	.5
Fiscal 1986 -- $3.0 million		
Phase IV -	Replacing water lines in Charlotte Amalie	$1.3
	Construct 1 mg storage tank in St. Thomas	.7
	Raw Water Collection System in St. Croix	.5
	Upgrading Pumping stations in St. Croix	.5
		12.0 mil

1/ $2.5 million in additional funding from local sources will be provided during fiscal year 1983, bringing first year construction cost to $4.0 million.

2/ Existing 5mg storage tank is the primary collector of water produced by plants. Before needed repairs can be commenced on this tank,alternate tank must be provided to permit withdrawal from service. The absence of such a back-up tank would necessitate plant and distribution shut-down for as long as the repair work lasts, denying drinking water to the entire community serviced from this source.

The foregoing program addresses only the correction of an existing problem. Extensions of water distribution system into new areas will be undertaken by the local government from increased revenues to be generated by the improved efficiency of the corrected system. Additionally, as stated elsewhere, distribution system into the rural areas is being financed by a low-interest long-term loan from FmHA. Upon completion, the government will experience $1.0 in savings annually through elimination of costly water trucking to the low cost housing developments.

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EXHIBIT D

GOVERNMENT OF

THE VIRGIN ISLANDS OF THE UNITED STATES

DEPARTMENT OF PUBLIC WORKS

A WATER SUPPLY PLAN
FOR THE
U.S. VIRGIN ISLANDS

With an Outline of Projects
Suggested for Federal Funding
During FY 1983-1986

April 1982

REPORT SUMMARY

General

The Virgin Islands began to develop a modern water supply system in the early 1950's. Since that time the Territory has been continually investing monies in both the supply and distribution of public potable water. The high cost of water (due to the necessity to desalt seawater), difficulties in construction, and the phenomenal population growth has prevented the Territory from really catching up with the needs of the water supply system. Of all of these problems the high cost of water supply (about 10 to 20 times that on the mainland) has been the most difficult problem as it has reduced the funds available to make needed capital improvements to the system.

Overall Water Plan

To guide our investment in the water system over the next 18 years we have developed a water supply management plan. Accompanying this summary is a report which outlines the overall water supply development plan for the Territory and suggests priority projects for possible Federal funding. The present and projected (Year 2000) systems are illustrated by various figures.

The projected capital cost to carry out a reasonable portion of the overall water plan is estimated to be about $60-65 million (in 1982 dollars) over the next 18 years. These funds would being the system back into a good operating condition and allow it to expand to serve a greater percentage of the populace.

Project Selections

A number of projects were selected from each island as part of this funding request. These projects fit into the short-term action plan (5 year plan) for each island. The projects are described in the report on an island-by-island basis. The cost for each project is based on preliminary engineering using component breakdowns and reasonable unit costs applicable to the Territory. As noted in the report's Cost Summary inflation was factored into the cost.

Project Priorities

The projects selected were given priorities based on their effectiveness in:

1. Improving the quality of water in the system.
2. Increasing the cost-effectiveness of the operations.

When completed the selected projects will aid to: reduce contamination of the system; increase operating revenues by decreasing leakage and increasing accountability, (billings); decrease the expense and subsidies involved in trucking water 5 to 6 miles to public housing projects; and decrease the cost of water by enabling the system to use more low cost, but brackish, ground water.

Why Fund

By funding these projects the Congress will assist the Territorial Government to make the large, and immediate, capital investments necessary to reduce future costs and increase revenue as well as improve quality of water provided Virgin Islanders.

The results of this investment will be an improved revenue versus expense balance for the Territory which could assist the Government of the Virgin Islands in generating its own funds for future expenditures on improving and developing the water system in the Virgin Islands.

BACKGROUND

System Development

Prior to the late 1940's Virgin Islanders obtained their water from shallow wells and collecting rainwater from hillside and roof catchments. People used these individual supplies or walked to community wells. Distribution systems on a community-wide basis were not in existence and the systems that did exist served only a few buildings and street corner standpipes.

In the late 1940's our present distribution system was begun. This still only served a few parts of the towns of Charlotte Amalie, Christiansted and Fredriksted. This early system was limited by funds and the amount of freshwater available.

The public water supply at that time was made up of water from hillside catchments and ground water. Unfortunately, the climate and hydrogeology of the Territory restricts the amount of ground water that can be obtained as well as adversely affecting its quality due to the high salt content in the water.

In the 1950's and through the 1960's the water distribution network expanded but the lack of an adequate water supply restricted the viability of the system. In the mid-1960's the islands began to acquire seawater distillation plants which operate using extraction steam from the steam turbines that drive the island's electric generators. Acquisition of these distillation plants has continued through the years until now desalted seawater makes up about 85 percent of the public potable water supply.

Although seawater desalination has been a boon to the Territory it is not without its problems. Among these are:

1. The high cost of producing the desalted water - currently about $11 to $12/1,000 gallons (water on the mainland generally costs under $1/1,000 gallons).

2. The technology was developing during the same period during which the purchases of the units took place. There were numerous technical problems with many of the units which caused them to be unreliable, have a short operating life, and have much higher operating costs than predicted. During the 3-year period 1977-1979 the total production from the desalting plants was only 25 percent of the installed capacity.

   Fortunately, the last 3 units which were installed in 1981 (with total capacity 3.75 mgd) appear to be functioning quite well and they will be the mainstay of the system.

3. The water from the older distillation plants tend to be unstable and if it is not properly neutralized it will (and has) caused corrosion of the steel components (pipes and storage tanks) within the distribution system.

In the 1970's the distribution systems were expanded further but construction, especially on St. Thomas, was limited due to the lack of water available for distribution.

Current Status of the System

Although the distribution system has been expanded considerably since its start in the late 1940's there are still major areas of each island which are not served by distribution systems.

	Present Service Area (sq mi)	Present Non-Service Area (sq mi)
St. Croix	14	70
St. John	1	19
St. Thomas	3	29

The people in the non-service areas are served mainly by capturing rainwater from their roof and storing it in cisterns. They supplement this with some ground water from individual wells, small seawater desalination plants, and water trucked in from either private or public sources.

The trucked water costs up to about $40/1,000 gallons, including delivery. Under an agreement the Territorial Government has with the Virgin Islands Housing Authority the government helps to subsidize the trucking of water to those public housing developments which are not on the public potable water distribution system. This has cost the Territorial Government upwards $400,000 to 500,000 annually during the past few years.

Presently the system is working better than it has for many years as there is now an adequate and reliable supply of freshwater being produced by the new seawater desalination units on St. Thomas and St. Croix. This has allowed the Public Works Department to resume distribution of water on a 24-hour basis. This has also allowed the discontinuation of the barging of water from Puerto Rico which was costing the Territory approximately $30/1,000 gallons.

Water is an expensive business in the Territory due to the high cost of desalted seawater and the problems involved in maintaining a distribution system in the islands. The estimated direct expenses involved in the purchase and distribution of public potable water in the Territory during fiscal year 1982 are shown below:

Water Purchases	$12,700,000
Labor	1,700,000
Expenses	600,000
	$15,000,000

To this must be added capital expenditures, amortization, etc.

Major Problems and Their Consequences

The major problems with the system have been as follows:

1. Lack of water to distribute. In the past this has forced the Public Works Department to shut down the system for periods ranging from a few hours to a few days during the past 10 years.

2. The high rate of corrosion of pipes, storage tanks, and other structures. This has been caused mainly by the highly saline nature of the island's soils, the wind blown salt spray from the sea, and the corrosive nature of the desalted water.

3. The water storage tanks were often in the past placed at too low an elevation. This means that pumps must be used to maintain pressure in the system. When power outages occur the system loses pressure.

4. The systems lack a good backflow/cross connection control program. There are indications that backflow can occur when the system loses pressure and that cross connections have occurred in the past.

5. The essentially linear configuration of the distribution systems with insufficient bypass routes and isolation valves. This has meant that if a component failed, large segments or all of the system must be shut down for repair of the pipe, valve, or whatever.

6. The lack of sufficient metering devices in the system to adequately account for water entering and leaving the system.

7. The lack of sufficient distribution pipelines to deliver water to people outside the towns.

8. A shortage of trained personnel and equipment to properly maintain, operate, and repair the distribution system.

The consequences of these and other problems have been that the system:

1. Could not maintain continual service (24-hour) to its consumers.

2. Has a high percentage of leakage due largely to corroded pipes and tanks.

3. Has difficulty in accounting for the water in the system.

4. Is limited in the consumers it can serve.

5. Has difficulty maintaining high quality water in the system due to the frequent loss of pressure (creating backflow

situations). internal corrosion, and contamination during repairs.

CURRENT PROGRAM--GENERAL

In the past few years the Government of the Virgin Islands has embarked on a program to rehabilitate and improve the Territory's water supply distribution system. The goals of this water supply distribution program are:

1. The improvement of the public water system so that it can deliver water that meets the standards of the Safe Drinking Water Act.

2. The improvement and/or expansion of the public water system so that it can cost-effectively serve the needs of the populace of the Virgin Islands.

To fulfill the first goal, efforts are being directed towards redesigning the system so that pressure (and water) can be maintained continually. This involves improvements in supply; conversion to a gravity system; increasing the storage capacity and placing it strategically throughout the system; installation of bypass lines and isolation valves; the institution of a backflow prevention and cross connection control program; and increased personnel training in the area of maintainance, operating, and repair of the system.

The second goal is being achieved through the alteration of the system so that the input and output of water in various sections can be monitored; the replacement or repair of leaking pipelines and storage tanks; and the expansion of the system to service that portion of the populace which can be economically served by pipelines.

Master Plan

The program is being guided by a master plan for the overall development of the water system on each of the three islands. This master plan covers the physical and institutional aspects of water supply and addresses management, conservation, economics, etc. The plan is an interdepartmental project within the Territorial Government and has been cooperatively developed by the Departments of Conservation and Cultural Affairs, Public Works, and the VI Planning Office. Input has and is continually being solicited from these and other agencies as well as the public so as to update the plan and our water supply program.

The physical development of the system under the current plan is shown on Figures 1 and 2. Figure 1 shows the major components of the current system and Figure 2 shows the desired development between now and the year 2000.

ST. CROIX

Background

St. Croix's public distribution system obtains its supply from both ground water (approximately 30 percent) and desalted seawater (approximately 70 percent). Problems with the desalting plants at the Virgin Islands Water and Power Authority (VIWAPA) have restricted the supply forcing the Territory to buy surplus water (when available) from the Martin Marietta Company. With the completion of the new desalting plant at VIWAPA, the reliability of the supply has increased but the island is very dependent on storage to bring them through any supply problems and/or fluctuations.

The well fields presently produce about 0.6 mgd of ground water which is brackish in nature (TDS of 1,000 to 1,500 mg/l) and, therefore, somewhat objectionable to drink creating some adverse consumer reaction.

The distribution system itself covers about 14 square miles and operates under a combination of gravity and pumped pressure zones. Although some leakage occurs, most of the old pipe has been replaced during the 1970's and this problem is not as critical as it is on St. Thomas. A recent inspection of the system's steel storage tanks has revealed that they will need to be taken out of service, cleaned, and recoated to protect the metal. In St. Thomas, when this was not done in time, the result of delay was serious structural damage by corrosion and the temporary loss (they are now being repaired) of 20 million gallons of storage.

St. Thomas fortunately had backup tanks but the placement of St. Croix's tanks within the system is not as condusive to this type of operation.

Current Program

The water supply master plan illustrated on Figure 2 for St. Croix through the year 2000 has the following goals:

1. Increasing the service area so as to deliver water to a greater percentage of the population.
2. Maintaining a storage capability of about 10 to 15 days supply (about 40 million gallons in 2000)
3. Converting the system to an all gravity feed in order to maintain a positive pressure on the system
4. Having storage tanks in the system that will complement each other's pressure zones so that in emergencies or repair situations one tank can substitute for another

5. Increasing the system's capability to mix water with desalted ground water to improve the overall taste and acceptability of the water to the consumer.

6. Having a very flexible distribution and storage system that can adequately serve the population despite unpredicted population shifts

7. Increasing the production of ground water so as to reduce the overall cost of water

Short-Term Action Plan (FY 1982-86)

The short-term action plan addresses many of these long-term goals over a period of the next 5 fiscal years (including 1982).

FY 1982--The distribution of water will be expanded by providing service to Glynn and Strawberry Hill (Projects C-J and C-Z). A portion of the North Road high pressure transmission system, the piece between C-10 and C-3 (Concordia to Morningstar Corner) is being installed while the road is being repaved. This transmission line will eventually allow desalted water to be pumped from the VIWAPA desalting facility directly to the Kingshill tank for mixing with ground water before distribution in the system.

A 2-million-gallon storage tank will be constructed at Mon Bijou (Project C-1). It will serve the Glynn-Mon Bijou-Grove Place service district and can act as an emergency backup tank so that the Kingshill Tank could possibly be taken out of service for repairs, inspection, etc. if absolutely necessary although its capacity is somewhat limited.

FY 1983--It is proposed that the $2.5 million grant and loan which is expected to be obtained from Farmers Home Administration would be used to build the North Road high pressure transmission main (Project C-3) from Richmond to Morningstar corner and to add new high pressure pumps to the main pump station at Richmond (Project C-4).

If additional Federal monies are made available, $1,660,000 would be allocated to construct a 5-million-gallon storage tank at Dolby Hill (Project C-2). This tank would act as a master control tank for filling the tanks at Mon Bijou (C-1) and St. John (C-11) as well as being able to substitute (with appropriate pressure relief valves and some miscellaneous piping) for these two tanks plus the tanks at Richmond, Kingshill, and Recovery Hill. This would permit these tanks to be drained, inspected, and repaired as needed.

FY 1984--If additional Federal monies are made available then $700,000 would be used to: modify the pump station at Richmond so that it can pump directly (without the existing 10-million-gallon tank) from VIWAPA's output pumps into the distribution system and to drain, inspect, repair, and recoat the 10-million-gallon tank at Richmond (Project C-8). The Dolby Hill tank (C-2) would take over the function of the major storage facility for the product water from VIWAPA's desalination facilities. The new high head pumps (C-4) and the North

Road high pressure transmission line (C-3) installed in FY 1983 will allow this system to operate during the tank repairs.

FY 1985--If additional Federal funds are made available then $770,000 will be invested in constructing the La Reine transmission main (Project C-10) to complete the high pressure dedicated transmission system from VIWAPA's desalting facility at Richmond to the central storage tank (10 million gallons) at Kingshill. This line in conjunction with the Dolby Hill tank (C-11) and pressure reducers will be used to fill the Mon Bijou tank (C-1) and to temporarily maintain pressure on the existing distribution system from VIWAPA northwest to St. John's by feeding water from the Dolby Hill tank to the existing 10-inch line at St. John's. When the tank at St. John's (C-11) is completed it will maintain pressure on this area.

If an additional $100,000 in Federal funds is available it would be invested in renovating the electrical controls in the various well field and transmission pumping stations (Project C-26).

FY 1986--If additional Federal funds are available about $450,000 will be spent to replace the old (and leaky) distribution system in the east-west streets in Fredriksted town and to construct a direct line from the in-town system to the existing 1-million-gallon tank at Mars Hill (Project C-5). This will allow this tank to be productively utilized in the system (it is now at an odd elevation that makes it only useful for emergency storage). By replacing the old lines in town, higher pressure (and better quality water) from mid-island can be used in these lines. Currently, only the low pressure brackish well water from the Prosperity Well Field is used without blending which creates palatability problems for these consumers.

An additional $300,000 in Federal monies would be used to repair the Recovery Hill tank (Project C-12). The Dolby Hill tank (C-2) with a pressure reducer would be used to pressurize the entire Christiansted system while the Recovery Hill Tank was out of service.

Short-Term Results--The results of this short term action program will be the completion of a high pressure, high capacity transmission system (Richmond to Kingshill) that will be able to transfer large quantities of high quality water (that is low in dissolved salts) from the desalting facility in Richmond to the island's main storage tank (10 million gallons) at Kingshill where it can be mixed (in the tank) with ground water to make a blend that will be readily accepted by the consumer.

This blended water from the Kingshill Tank can then be sent by gravity both east (as far as Grange) and west to Frederiksted. This will permit the discontinuation of the Contentment pumping station and the transfer of water over Herman Hill. By blending water more of the cheaper ground water can be used to reduce overall system costs without increasing consumer complaints.

The installation of the Dolby Hill (C-2) tank will not only provide additional storage capacity at high elevation but its position in the system will permit it to be temporarily substituted for any of three tanks (Kingshill, Richmond and Recovery Hill) in existence now as well as the Mon Bijou and St. John's Tanks which will be built in the future.

It is planned to clean, repair, and recoat at least 2 of these major tanks during this period in order to avoid the risk of serous structural damage.

The replacement of the old pipelines in Frederiksted and the use of the old Mars Hill tank as well as the new Dolby tank will place the entire system on a gravity feed so that a positive pressure can be monitored on the system. This positive pressure along with the installation of backflow devices and cross connection control should aid in keeping the water in the system a high quality.

Long-Term Objectives--Once the system is totally on a gravity feed it will be expanded to new areas with tanks placed at suitable locations to provide the pressure suitable for the elevations served. There will be approximately three different pressure zones on the island to accommodate various areas. The system is designed to have for most major areas at least two routes for water to be delivered. This will assure a continuity in supply when repairs may be required and by having a "looped" circuit the delivery capacity is increased considerably. This will be useful in areas in which growth or demand exceeds that predicted.

Table 1
ESTIMATED COSTS FOR THE INSTALLATION OF PRODUCTION, TRANSMISSION, AND STORAGE FACILITIES ON ST. CROIX

Project No. & Map Code	Project Description	Project Components	Estimated Cost
C-1	Construct Mon Bijou storage tank	One 2-MG storage tank including land-base elevation 235 feet	$ 840,000
C-2	Construct Dolby Hill storage tank	One 5-MG storage tank including land-base elevation 250 feet	1,660,000
C-3	Construct North Road high pressure transmission main from Richmond to Beeston Hill and Morningstar Corner (16" and 12")	3,500 feet 12"-pipe 18,500 feet 16"-pipe	2,300,000
C-4	Make Richmond Pump Station modifications	Add high head (345 feet) pumps modify electrical controls	200,000
C-5	Replace old east-west lines in Frederiksted and build new 10" line to Concordia tank	7,000 feet 6"-pipe 5,500 feet 10"-pipe	450,000
C-6	Construct Adventure raw water delivery main	10,500 8"-pipe	400,000
C-7	Construct Barren Spot raw water delivery main	6,500 8"-pipe	250,000
C-8	Repair Richmond Tank and connect WAPA feed to pump suction	Sandblast, repair, and apply coatings; add misc. pipe valves	700,000
C-9	Construct the wells and associated piping the Sion/Ruby Well Field	Eight wells, land purchase (2 ac) One pump station, 11,000 ft-8" pipe 2,500 ft-6" pipe	700,000

Table 1--Continued

Project No. & Map Code	Estimated Project Description	Project Components	Cost
C-10	Construct La Reine transmission main	11,000 feet 16"-pipe	770,000
C-11	Construct St. John's storage tank	One 1-MG storage tank-base elevation 135 feet	540,000
C-12	Repair Recovery Hill storage tank	Sandblast, repair, and apply coatings on a 1 MG steel tank	300,000
C-13	Construct Wheel of Fortune storage tank and connector main	One 5-MG storage tank-base elevation 230 feet 7,000 feet 10" pipe	1,930,000
C-14	Construct Creque Well Field and add a pump station at Prosperity, and transfer mains to The Wheel of Fortune tank	Eight wells land purchase (2 ac) One pump station 6,000 feet 6" pipe	6,500 [illegible]
C-15	Construct Constitution storage tank and piping to Herman Hill (8")	One 2-MG storage tank-base elevation 400 feet 10,000 feet 8" pipe	1,460,000
C-16	Construct Sion Valley-Bonne Esperance transmission mains (8")	35,000 feet 8" pipe	1,155,000
C-17	Construct Lowry Hill storage tank and transmission lines to 1) Mt. Washington and 2) the Southgate bypass	One 5-MG storage tank-base elevation 230 feet 22,000 feet 10" pipe	2,450,000
C-18	Construct La Vallee storage tank and transmission lines from Morningstar Corner to LaVallee	One 0.5-MG storage tank-base elevation 230 feet 22,000 ft-8"-pipe	1,100,000
C-19	Construct Mt. Washington-Cotton Valley transmission line	36,000 feet 8" pipe	1,300,000

Table 1--Continued

Project No. & Map Code	Project Description	Project Components	Estimated Cost
C-20	Construct Cotton Valley-Turner Hole transmission line	20,000 feet 8" pipe	720,000
C-21	Construct East Airport Road-South Shore-Whim transmission main (10")	40,000 feet 10" pipe	1,520,000
C-22	Construct Robin Bay transmission main	21,000 feet 8" pipe	756,000
C-23	Construct Hams Bay transmission main (8")	21,000 feet 8" pipe	756,000
C-24	Construct Longford-South Shore transmission main (8")	28,000 feet 8" pipe	1,008,000
C-25	Construct Davis Bay transmission main (6")	10,000 feet 6" pipe	330,000
C-26	Make electrical system improvements in various existing pumping stations	Lump sum	100,000
C-27	Construct Bethlehem well field and raw water delivery line	Five wells 4,000 feet 6" pipe Land purchase (7 ac)	250,000
C-28	Expand Barren Spot, Concordia, and Negro Bay wellfields	Twelve wells Land purchase (2 ac)	200,000
C-29	Construct Plessens well field and raw water delivery line	Five wells 2,000 feet 6" pipe Land purchase (2 ac)	180,000
C-30	Repair Kingshill storage tank	Sandblast, repair, and apply coatings on a 10 MG steel tank	500,000

Table 1--Continued

Project No. & Map Code	Project Description	Project Components	Estimated Cost
C-31	Repair Mars Hill storage tank	Sandblast, repair, and apply coatings on a 1 MG steel tank	300,000
C-32	Backflow prevention and cross-connection control	Miscellaneous fittings installation, inspection, etc.	300,000
C-33	Intall master meters in the distribution system	Miscellaneous 4, 6, 8, 10 and 12" meters with check valves	400,000
C-34	Install new and additional valves and piping changes in the system to allow subsystem isolation and bypassing	Miscellaneous valves, pipes, etc.	800,000
C-35	Construct a brackish water reverse osmosis plant at Fair Plains	1.5 mgd capacity	3,000,000
C-36	Construct a high pressure transmission line from Orange Grove to Tide Village along the new Christiansted Bypass route	14,000 ft-12" pipe	600,000
C-37	Construct Profit well field one raw water line	Five wells 2,000 ft-6" pipe land purhcase (2 ac)	180,000
Total			$31,005,000

Table 1--Continued

Notes:

1. All cost figures in this report are order-of-magnitude estimates. These are approximate estimates, made without detailed engineering data. It is normally expected that an estimate of this type would be accurate within +50% or -30%.

2. All work is estimted including engineering, inspection, testing, and construction by a private contractor.

3. MG = million gallons, mgd - million gallons per day, RO = reverse osmosis

Table 7
ESTIMATED COSTS FOR INSTALLATION OF DISTRIBUTION SYSTEMS AND CONNECTIONS WITHIN DISTRIBUTION DISTRICTS ON ST. CROIX

Project No. Map Code	Description	Type	Estimated Cost[a, b]
C-A	Carlton Garden	FC	$ 996,000
C-B	Hogensborg	FC	1,206,000
C-C	St. George	FC	1,134,000
C-D	Carlton	FC	1,722,000
C-E	Cane Estate	FC	1,206,000
C-F	William's Delight	FC	966,000
C-G	Coble	FC	792,000
C-H	Colqounoun	FC	996,000
C-I	La Vallee	FC	756,000
C-J	Glynn	FC	Under Construction (1982)
C-K	Queen's Quarters	FC	2,550,000
C-L	Sion Valley	FC	4,302,000
C-M	Peppertree Terrace	FC	690,000
C-N	Humbug	FC	1,242,000
C-O	Herman Hill	FC	1,032,000
C-P	Bugby Hole	FC	894,000
C-Q	Judith's Fancy--West	FC	1,410,000
C-R	St. John	FC	966,000
C-S	Judith's Fancy--East	FC	1,134,000
C-T	Mt. Welcome	FC	618,000
C-U	All-for-the-Better	FC	894,000
C-W	Cotton Valley	FC	690,000
C-X	Catherine's Hope	FC	996,000
C-Y	La Grande Princess	FC	930,000
C-Z	Strawberry Hill	FC	Under Construction (1982)
			Total = $28,122,000

Note: Type construction: FC = Flat country; SC = Steep country; T = Town.

[a] Covers distribution throughout stated area shown on map (Figure 2), with average density of 4 units/acre.

[b] Order of magnitude cost estimates which include all materials (pipe, hydrants, and individual and master meters); installation; repairs to roads, sidewalks, etc.; engineering; bid documents and plans; and inspection and testing. The estimate was based on all work being done by outside contractors.

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ST. JOHN

Background

St. John's public distribution system now obtains its water from a recently completed well field located in the mountains above the town of Cruz Bay. The current system is illustrated in Figure 1. The distribution of water is limited only to about ten connections in the block in front of the town's main dock. In the past, water was barged from St. Thomas and stored in the 0.5 million gallon tank in the town. Currently pressure is maintained by a pump located at the site of the ground storage tank.

Current Program

The water supply master plan (illustrated on Figure 2) for St. John through the year 2000 has the following goals:

1. Increasing the service area to serve additional segments of the population.
2. Maintaining a storage capability of about 10 to 15 days storage.
3. Converting the system to a gravity feed in order to maintain positive pressure on the system.
4. Improvement of the supply and palatability of the water distributed.

Short-Term Action Plan (FY 1982-1986)

The short-term action plan begins to address some of these long-term goals over the next five years.

FY 1982--The Government is currently attempting to clear up problems associated with a small 50 thousand gallon water storage tank located at an elevation of about 200 feet. The completion of this tank will enable the system in Cruz Bay to operate by a gravity feed with the tank in town being used for emergency storage, filling trucks, etc.

FY 1984--If Federal monies are made available then $200,000 would be used to expand the water system in the area in and around Cruz Bay (Project J-A) to serve additional consumers in the area.

FY 1985--If Federal monies are made available then $200,000 will be used to further expand the distribution system in the Cruz Bay area (Project J-A).

FY 1986--If Federal monies are made available then $100,000 will be used to further expand the distribution system in the Cruz Bay area (Project J-A).

Short-Term Results--The system will be able to serve more consumers and do it with a positive gravity feed on the system. One problem will be the limited amount of high storage available. If there was a power outage for an extended period, then the high tank would soon be drained.

This system should enable the government to reduce or eliminate the use of a barge to bring water to the island.

Long-Term Objectives--It is hoped to continue expansion of the Cruz Bay distribution system to Fish Bay with a 0.5 million gallon storage tank to be located at an elevation (about 200 feet) that would provide adequate storage for prolonged periods.

The supply would be increased by expanding the existing well field and constructing a small well field above Enighed Pond (which is expected to be brackish) and treating that water with reverse osmosis. The low TDS product would be blended with the water form the Adrian well fields to improve its taste.

When demand warrants it, a line and appropriate distribution systems will be built at Coral Bay. The supply will come from a small reverse osmosis plant which could treat seawater or from a long pipeline from the Adrian well field.

Table 5

ESTIMATED COSTS FOR INSTALLATION OF PRODUCTION, TRANSMISSION AND STORAGE FACILITIES ON St. JOHN

Project No.& Map Code	Project Name	Description	Estimate
J-1	Adrian Well Field Expansion	Add 5 wells Purchase land connect to puming station	100,000
J-2	Transmission line to Roman Hill	4,400 ft - 8" pipe	145,000
J-3	Construct distribution line around Contant Hill	5,000 ft - 6" pipe	150,000
J-4	Construct distribution line around Moria Bluff	9,000 ft - 6" pipe	270,000
J-5	Construct distribution line to Bovocoap Point	4,500 ft - 6" pipe	135,000
J-6	Transmission line to Fish Bay	8,000 ft - 6" pipe	240,000
J-7	Construct a storage tank near Roman Hill	0.5 MG tank Base elevation 200 ft	390,000
J-8	Install seawater RO plant	0.02 MGD RO plant	400,000
J-9	Construct a transmission line Johns Folly to Emmauvs	17,000 ft - 6" pipe	510,000
J-10	Construct a storage tank near Calabash Boom	0.2 MG tank Base elevation 160	230,000
J-11	Construct a brackish water well field and install a brackish water RO plant near Enighed	4 wells 0.05 MGD RO plant	180,000
	Total		$2,750,000

Notes:

MG = Million gallons, mgd = million gallons per day
RO = reverse osmosis

Table 6

ESTIMATED COSTS FOR INSTALLATION OF DISTRIBUTION SYSTEMS AND CONNECTIONS WITHIN DISTRIBUTION DISTRICTS ON ST. JOHN

Code	Service District Description	Construction Code	Estimated Cost
J-A	Greater Gruz Bay	FC	480,000
J-B	Fish Bay	FC	588,000
J-C	Calabash Boom	FC	792,000
J-D	Coral Harbour	FC	480,000
Total			$2,340,000

Notes:

Type construction: FC = Flat country; SC = Steep country; T = Town

[a] Covers distribution throughout stated areas shown on map (Figure 2), with average density of 4 units/acre.

[b] Order of magnitude cost estimated which include all materials (pipe, hydrants, and individual and master meters); installation; repairs to roads, sidewalks, etc.; engineering; bid documents and plans; and inspection and testing. The estimate was based on all work being done by outside contractors.

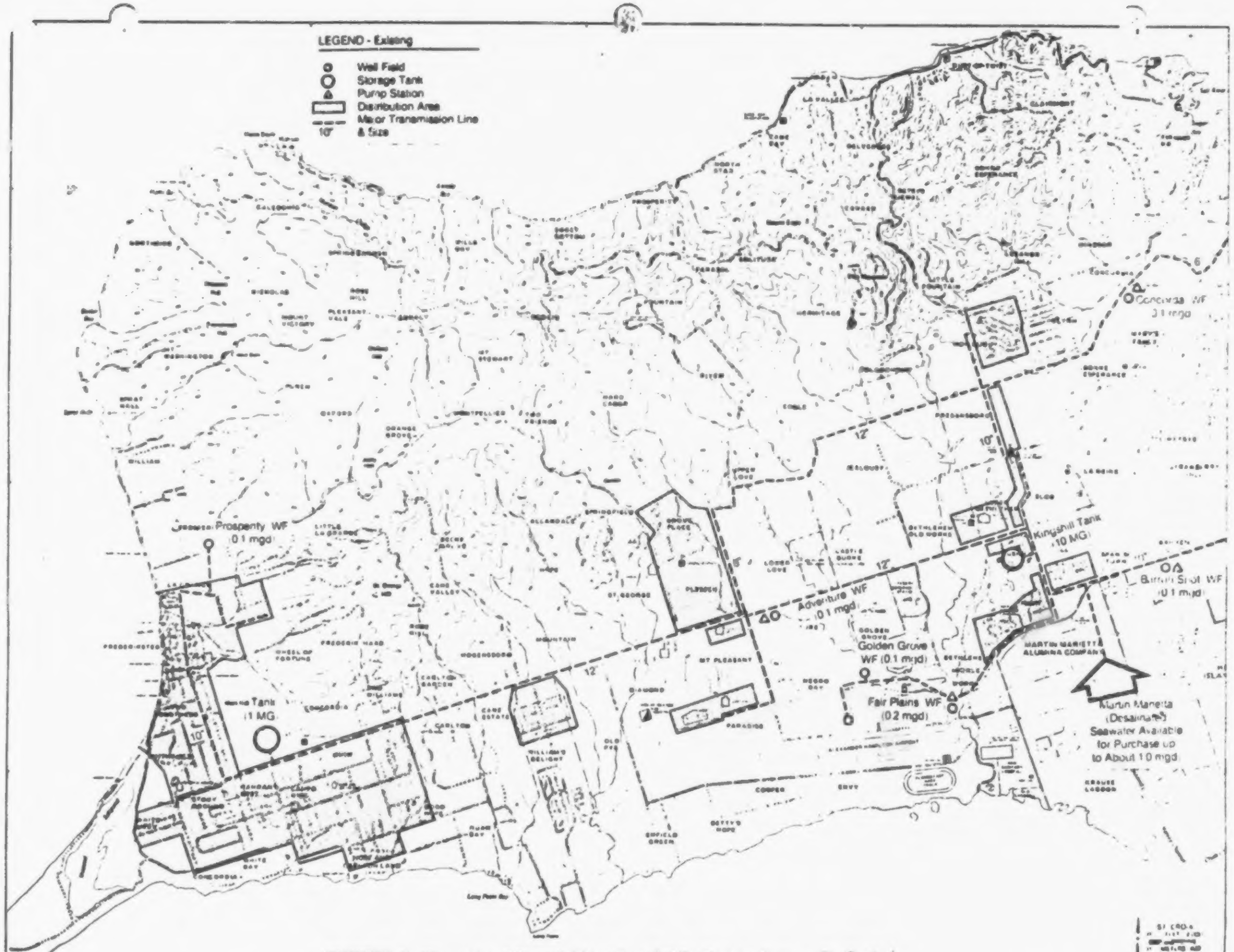
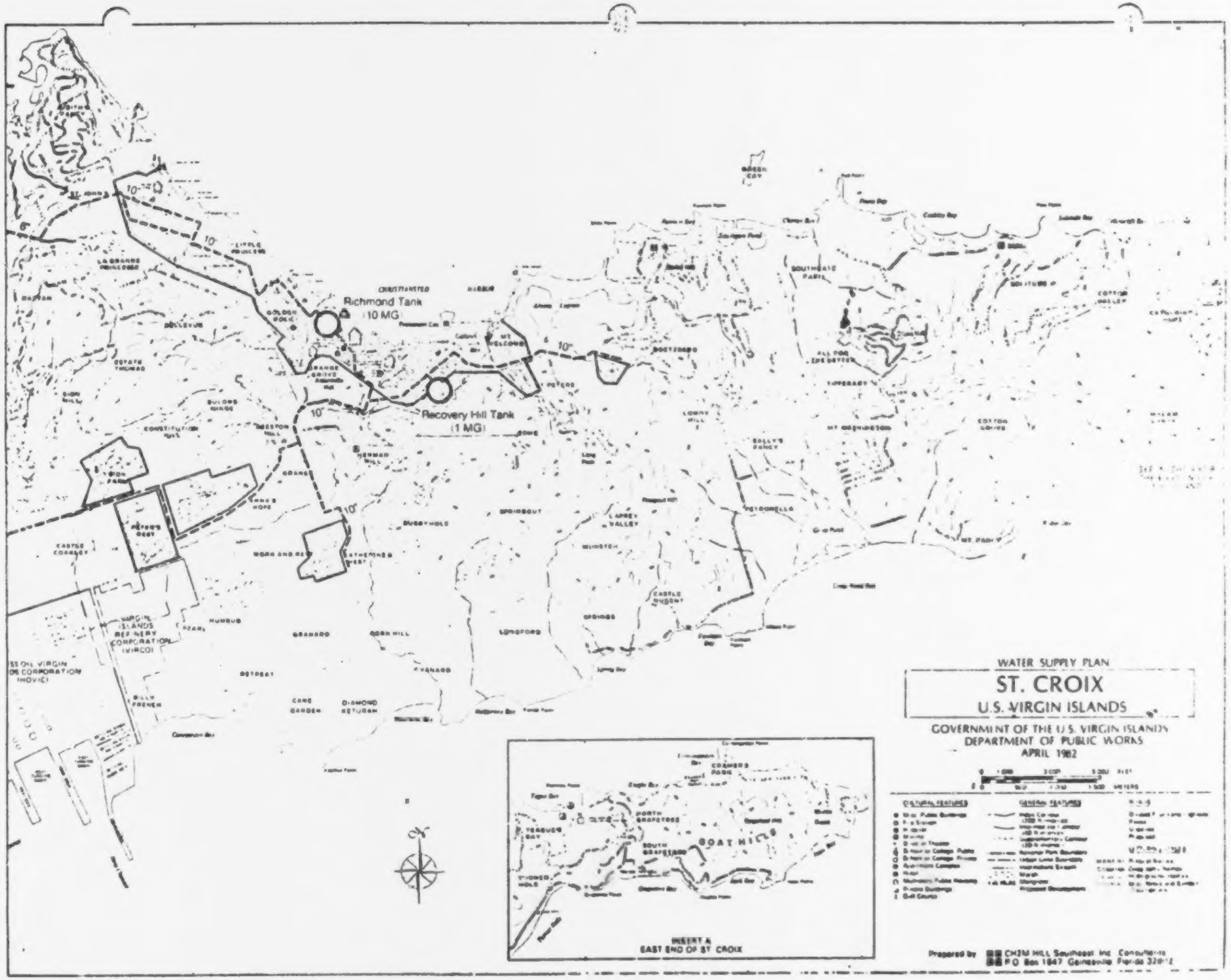

LEGEND - Existing
Well Field
Storage Tank
Pump Station
Distribution Area
Major Transmission Line & Size
10"
Prosperity WF (0.1 mgd)
Tank (1 MG)
10"
12"
Adventure WF (0.1 mgd)
Golden Grove WF (0.1 mgd)
Fair Plains WF (0.2 mgd)
12"
10"
Kingshill Tank (10 MG)
Barren Spot WF (0.1 mgd)
Concordia WF (0.1 mgd)
MARTIN MARIETTA ALUMINA COMPANY
Martin Marietta (Desalinated) Seawater Available for Purchase up to About 10 mgd
ST. CROIX

FIGURE 1. Present public potable water distribution system — St. Croix.



Richmond Tank
(10 MG)
Recovery Hill Tank
(1 MG)
10"
CHRISTIANSTED
HARBOR
LITTLE PRINCESS
LA GRANDE PRINCESSE
ESTATE THOMAS
CONSTITUTION HILL
GOLDEN ROCK
MT WELCOME
PETERS
HERMAN HILL
CASTLE COAKLEY
PETER'S REST
WORK AND REST
CATHERINE'S REST
VIRGIN ISLANDS REFINERY CORPORATION (VIRCO)
SS OIL VIRGIN
DS CORPORATION
(HOVIC)
BUGBY HOLE
SPRINGHOUT
LONGFORD
GRANARD
CORN HILL
DIAMOND RETURN
CANE GARDEN
SOUTHGATE FARM
TIPPERARY
MT WASHINGTON
COTTON GROVE
COTTON VALLEY
CASTLE BURGUNDY
INSERT A
EAST END OF ST CROIX
NORTH GRAPETREE
SOUTH GRAPETREE
GOAT HILL
WATER SUPPLY PLAN
ST. CROIX
U.S. VIRGIN ISLANDS
GOVERNMENT OF THE U.S. VIRGIN ISLANDS
DEPARTMENT OF PUBLIC WORKS
APRIL 1982
0
FEET
METERS
Prepared by CH2M HILL Southeast Inc. Consultants
P.O. Box 1647 Gainesville Florida 32602

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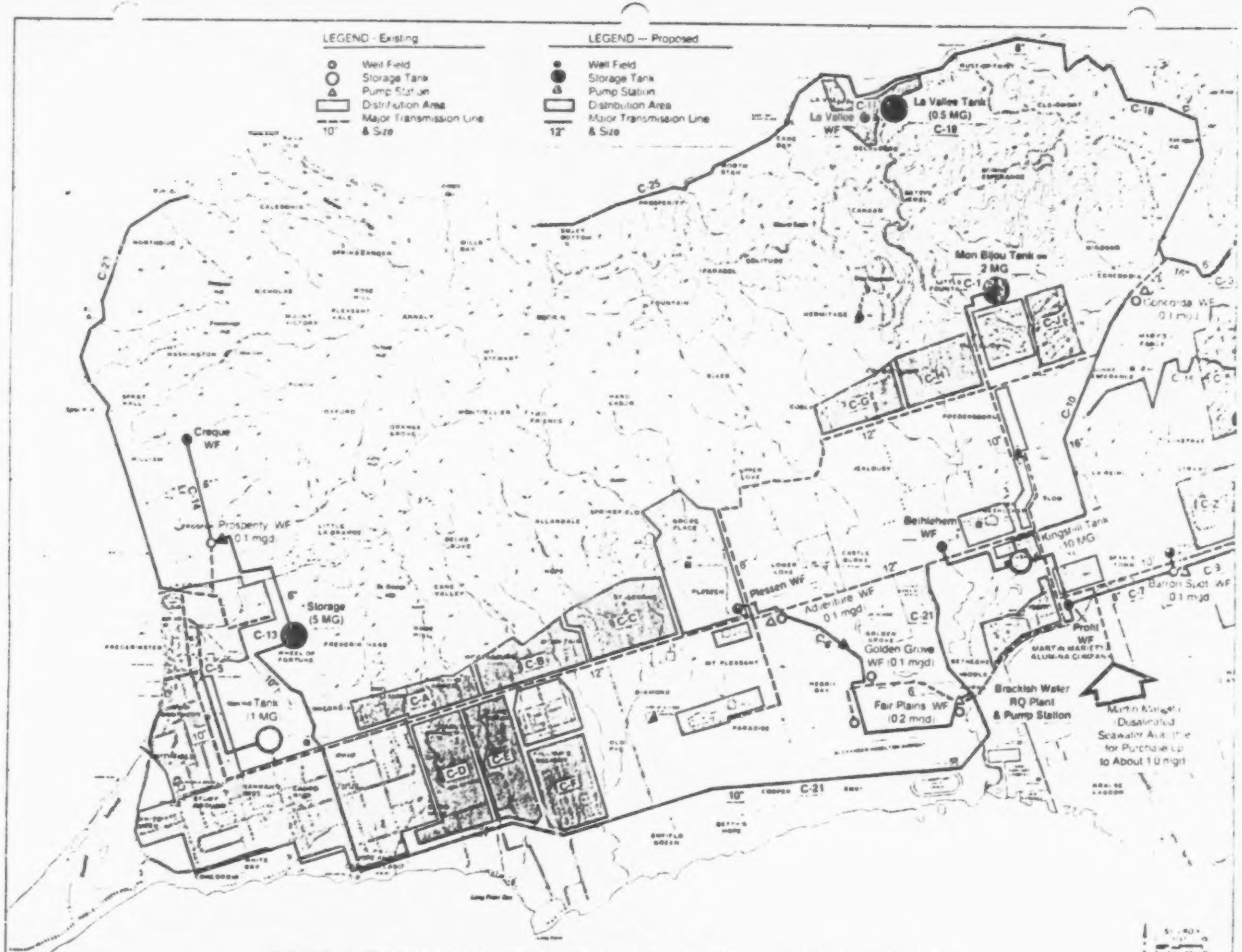
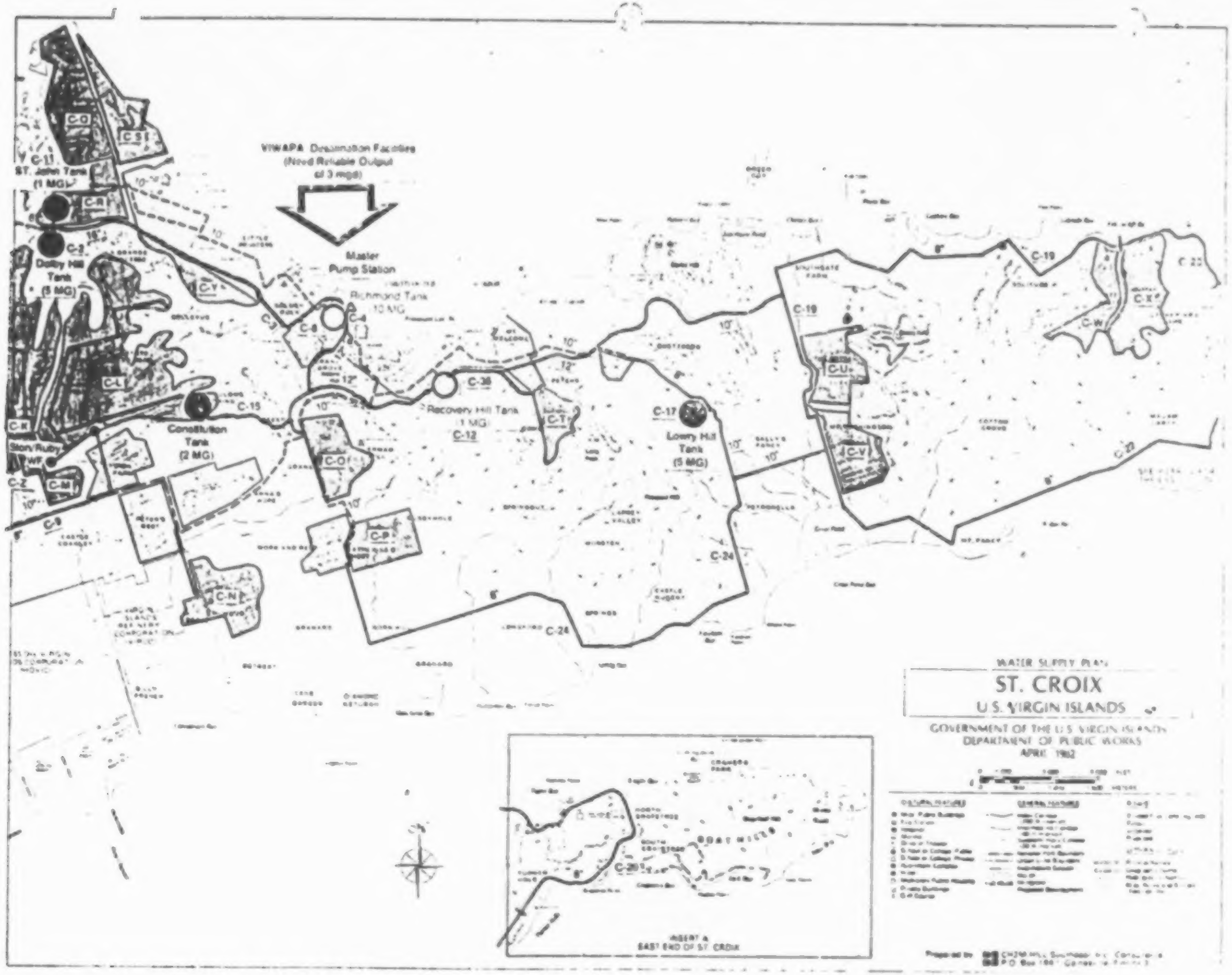

LEGEND - Existing
Well Field
Storage Tank
Pump Station
Distribution Area
Major Transmission Line & Size
10"
LEGEND — Proposed
Well Field
Storage Tank
Pump Station
Distribution Area
Major Transmission Line & Size
12"
La Vallee Tank (0.5 MG)
C-18
La Vallee WF
C-11
C-25
C-21
Mon Bijou Tank 2 MG
C-1
C-J
C-H
C-G
C-10
Concordia WF 0.1 mgd
C-18
Creque WF
C-14
Prosperity WF 0.1 mgd
Storage (5 MG)
C-13
C-5
Tank (1 MG)
C-A
C-B
C-C
C-D
C-E
C-F
Plessen WF
Adventure WF 0.1 mgd
Golden Grove WF (0.1 mgd)
Fair Plains WF (0.2 mgd)
C-21
Bethlehem WF
Kingshill Tank 10 MG
Barren Spot WF 0.1 mgd
C-7
C-9
C-2
Profit WF
Martin Marietta Alumina Company
Brackish Water RO Plant & Pump Station
Martin Marietta Desalinated Seawater Available for Purchase up to About 1.0 mgd
C-21
10"
12"
16"
6"

FIGURE 2. Projected public potable water distribution system by year 2000 — St. Croix.


VIWAPA Desalination Facilities
(Need Reliable Output
of 3 mgd)
Master
Pump Station
Richmond Tank
10 MG
St. John Tank
(1 MG)
Dolby Hill
Tank
(5 MG)
Constitution
Tank
(2 MG)
Ston/Ruby
WF
Recovery Hill Tank
(1 MG)
Lowry Hill
Tank
(5 MG)
C-O
C-S
C-11
C-R
C-2
C-Y
C-3
C-6
C-4
C-L
C-15
C-X
C-Z
C-M
C-9
C-N
C-O
C-P
C-36
C-12
C-T
C-17
C-24
C-19
C-U
C-V
C-W
C-X
C-22
C-20
C-23
10"
12"
16"
8"
INSERT A
EAST END OF ST. CROIX
WATER SUPPLY PLAN
ST. CROIX
U.S. VIRGIN ISLANDS
GOVERNMENT OF THE U.S. VIRGIN ISLANDS
DEPARTMENT OF PUBLIC WORKS
APRIL 1982
Prepared by CH2M HILL Southeast, Inc. Consultants

ST. THOMAS

Background

St. Thomas' public distribution system obtains its supply almost exclusively from desalted seawater. With the completion of the two new desalting plants at VIWAPA the reliability of the supply has increased and the capability for production of water exceeds the Department of Public Works capacity to distribute water when all VIWAPA's plants are producing water.

At present the active water distribution system on St. Thomas serves an area of about 3 square miles in Charlotte Amalie and around the airport. It is shown in the maps in Figure 1. The water is pumped by VIWAPA to four 10 million gallon tanks at Sara Hill. Since these tanks are not high enough to serve the system by gravity, two pumping stations pump water to the system. The lack of elevated storage tanks in the system results in frequent losses of pressure when power failures occur. In addition to being inconvenient, the loss of pressure greatly increases the probability of contaminating the system.

The existing distribution system in Charlotte Amalie and Bournefield (the area north of the airport) contains a considerable amount of old pipe which is highly corroded. The old pipes are undoubtedly responsible for a significant amount of leakage as well as service interruptions caused by frequent main breaks.

Another serious deficiency in the system is an unusually high number of nonfunctioning service meters. This situation has been caused, in large part, by the long period of interrupted service during the past few years as well as the presence of corrosion products in the pipe lines. It is difficult to maintain water accountability without properly functioning meters.

In the mid 1970's the East-End Water Transmission System and distribution mains in Old Tutu and New Tutu were constructed. The transmission system includes Pumping Station No. 2 at Sara Hill (6.0 MGD capacity), a 24-inch main from Sara Hill to Sugar Estate, the Sugar Estate Pumping Station (3.0 MGD capacity), an 18-inch main to the 5.5 MG Donoe Tank (at an elevation of 580 feet), and 18-inch and 12-inch transmission mains from the tank to Tutu. The transmission system was designed to pump water from Sara Hill to the portion of the island east of the town of Charlotee Amalie. This system was designed to be separate from the Charlotte Amalie distribution system, however, the Department of Public Works has changed this concept and now intends to use this system to transmit water to Charlotte Amalie as well as the east end of the island. This will greatly increase the reliability of the system in Charlotte Amalie.

Although construction was completed on the East End Transmission System in 1977 (except for approximately 500 feet of 24-inch main immediately south of the Sugar Estate Pumping Station) the system was not activated due to the lack of water. Now that an excess of water production capacity is available from VIWAPA, the Department of Public Works has embarked on a program to activate the East End System. The system is to be activated in two phases. In Phase I, water is to be transmitted to Sugar Estate Pumping Station by gravity from tanks at Sara Hill via the 24-inch main; in Phase 2, Pumping Station No. 2 will be activated and water will be pumped at high pressure to Charlotte Amalie and the Sugar Estates Pumping Station simultaneously. A new 1.0 MG storage tank at Sugar Estate (set at a high elevation) will be required for Phase 2 to permit safe and reliable operation of this dual system.

Current Program

The water supply master plan illustrated in Figure 2 for St. Thomas through the year 2000 has the following goals:

1. Increasing the service area so as to deliver water to a greater percentage of the populace.
2. Maintaining a total storage capacity of over 10 days supply.
3. Converting the system to an all gravity feed with an elevated storage capacity of two or more days supply in order to maintain a positive pressure on the system.
4. Dividing the system into pressure zones to permit service at pressures in a safe range for direct use.
5. Having storage tanks in the system that will complement each other's pressure zones so that in emergencies or repair situations one tank can substitute for another.
6. Having a very flexible distribution and storage system that can adequately serve the population despite possible unpredicted population shifts.
7. Decreasing the cost of operating the system by improving water accountability through improved service meter maintenance and by division of the system into areas which can be monitored with mainline meters.

Short Term Action Plan (FY 1982-1986

The short-term action plan addresses many of these long-term goals over a period of the next 5 fiscal years (including 1982).

FY 1982--The current program of replacing nonfunctioning meters will be completed. The Phase 1 activation of the East End Transmission System will be completed by constructing the connections to the 24-inch main, completing necessary modifications to Sugar Estate Pumping Station and testing and placing the 18-inch main to Tutu into service. With the completion of these improvements water can be transmitted to three public housing projects in Tutu eliminating the requirement to

truck water to these locations and reducing the trucking subsidy paid to the Virgin Islands Housing Authority.
FY 1983--It is proposed that the $500,000 grant which is expected to be obtained from the Economic Development Adminstration would be used to replace the old main under the airport runway (Project T-7) and to modify the existing Pumping Station No. 2 at Sara Hill (Project T-6) .

If additional Federal monies are made available, $650,000 would be allocated for constructing a 1.0 MG storage facility near the Sugar Estate Pumping Station (Project T-5) and $680,000 would be allocated for partial rehabilitation of the Charlotte Amalie distribution system in an effort to reduce leakage (Project T-8).

FY 1984--If additional Federal monies are made available: $320,000 would be allocated to further rehabilitate the Charlotte Amalie distribution system (Project T-9); $550,000 would be allocated for replacement of the old 6-inch main along Harwood Highway in an effort to reduce leakage and increase system reliability (Project T-10); $245,000 would be allocated to replace corroded mains in the Bournefield area (Project T-11); $150,000 would be allocated to eliminate electrical deficiencies in the existing water system booster stations (Project T-12); $145,0000 would be allocated for the installation of backflow prevention devices to reduce system contamination (Proejct T-13); $510,000 would be allocated to construct the Lower Tutu-Bovoni transmission main to Bovoni (Project T-14). This latter project, will almost completely eliminate the subsidy for trucking water to public housing project.

FY 1985--If additional Federal monies are made available: $1,380,000 would be allocated to construct a 2.0 MG tank near Joseph Gomez School and 1.0 MG tank near Bovoni (Project T-15); and $220,000 would be allocated to construct the first phase of a distribution system in the populated area near Mangrove Lagoon (Project T-A). The two new tanks will provide a reliable source of pressure for Lower Tutu, Bovoni and eventually all of the lower pressure zone on the south coast of the east end of the island will be served by them.

FY 1986--If additional Federal monies are made available: $80,000 would be allocated for the completion of the Mangrove Lagoon distribution system (Project T-A); $1,075,000 would be allocated for the construction of a 0.5 MG tank at Old Tutu, a 0.5 MG tank at New Tutu, a transmission main to the Old Tutu tank and other modifications to divide the distribution system into pressure zones (Project T-17); $240,000 would be allocated for installation of services in the existing distribution district in Old and New Tutu (Project T-18); $275,000 would be allocated for construction of a transmission main to Hidden Valley (Project T-19). This transmission main will time the pressure zones in Old and New Tutu together improving the delivery of water and at the same time will be the first phase of bringing water to the Hidden Valley area.

Short-Term Results--An important result of the short-term action program will be the reduction in leakage and system contamination through the elimination of corroded mains, the installation of backflow prevention devices, and the beginning of the conversion of the system to a gravity flow which will mean a more reliable positive pressure throughout the system.

The activation of the East End Transmission System will greatly increase the reliability of the supply to Charlotte Amalie and will make possible both the rehabilitation of that system and the division of the system into separate metered areas for improved water accountability.

The activation of the East End System will also greatly reduce the expensive subsidy involved in trucking water to several public housing projects.

Long-Term Objectives--The long-term objectives of the proposed facilities is to provide a reliable gravity feed water system with the water quality meeting the standards of the Safe Drinking Water Act for all persons within areas that can be economically served. The system will be divided into pressure zones to provide pressure suitable for the elevations served.

Due to the high cost of desalinated water, leakage control will be a prime consideration in the design and construction of new facilities as well as the rehabilitation of the existing system.

It is anticipated that the rehabilitation efforts in the Short-Term Action Plan will be only the beginning of a long-term rehabilitation program in Charlotte Amalie. These early efforts will eliminate some of teh obvious deficiencies and make possible a water accountability program which will results in the identification of further economically beneficial rehabilitation projects.

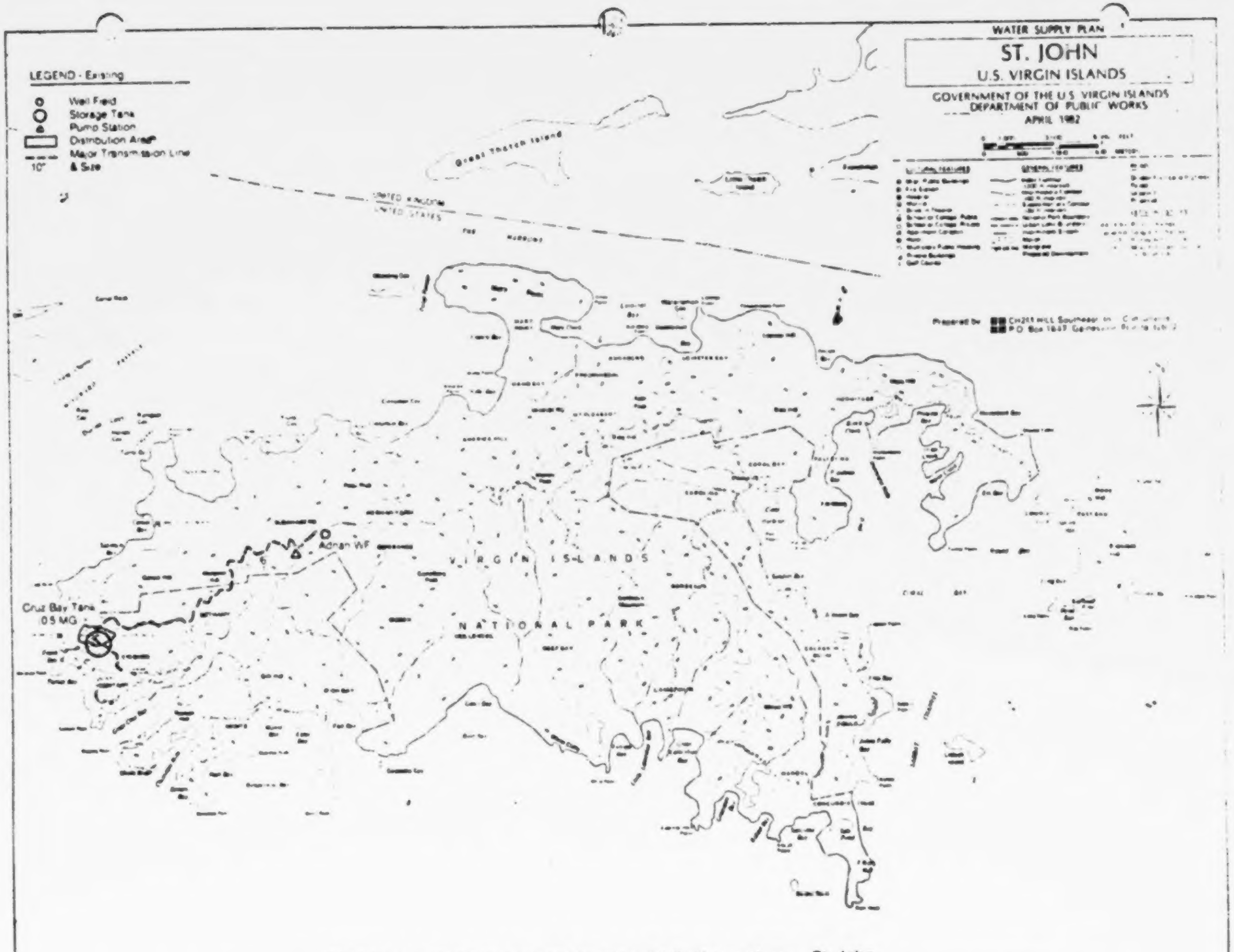

WATER SUPPLY PLAN
ST. JOHN
U.S. VIRGIN ISLANDS
GOVERNMENT OF THE U.S. VIRGIN ISLANDS
DEPARTMENT OF PUBLIC WORKS
APRIL 1982
LEGEND - Existing
Well Field
Storage Tank
Pump Station
Distribution Area
Major Transmission Line
10"
& Size
Great Thatch Island
UNITED KINGDOM
UNITED STATES
Adrian WF
Cruz Bay Tank
0.5 MG
VIRGIN ISLANDS
NATIONAL PARK
Prepared by
CH2M HILL Southeast, Inc. Consultants
P.O. Box 1647 Gainesville, Florida

FIGURE 1. Present public potable water distribution system — St. John.

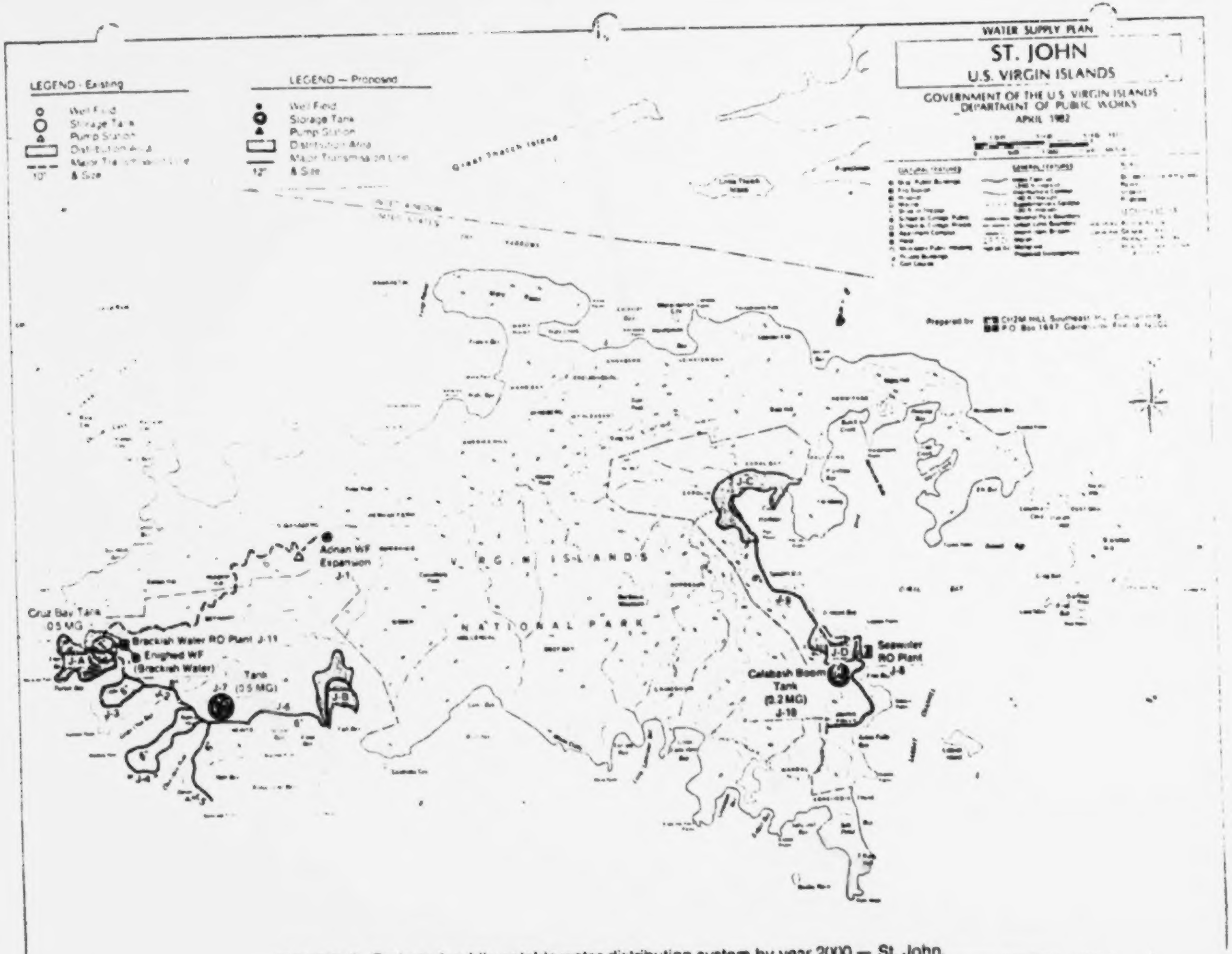

WATER SUPPLY PLAN
ST. JOHN
U.S. VIRGIN ISLANDS
GOVERNMENT OF THE U.S. VIRGIN ISLANDS
DEPARTMENT OF PUBLIC WORKS
APRIL 1982
LEGEND - Existing
Well Field
Storage Tank
Pump Station
Distribution Area
Major Transmission Line
10"
& Size
LEGEND — Proposed
Well Field
Storage Tank
Pump Station
Distribution Area
Major Transmission Line
12"
& Size
Great Thatch Island
VIRGIN ISLANDS
NATIONAL PARK
Adrian WF
Expansion
J-1
Cruz Bay Tank
0.5 MG
Brackish Water RO Plant J-11
Enighed WF
(Brackish Water)
J-A
J-2
J-3
J-4
J-5
J-6
J-7
Tank
(0.5 MG)
J-B
J-C
J-9
J-D
Seawater
RO Plant
J-8
Calabash Boom
Tank
(0.2 MG)
J-10
6"
Prepared by
CH2M HILL Southeast
P.O. Box 1647

FIGURE 2. Projected public potable water distribution system by year 2000 — St. John.

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Table 3
ESTIMATED COSTS FOR THE INSTALLATION OF PRODUCTION, TRANSMISSION, AND STORAGE FACILITIES ON ST. THOMAS

Map Code	Project Description	Project Components	Estimated Cost
T-1	Install service meters in Charlotte Amalie		$ 50,000
T-2	Construct connection between 24" main and Sugar Estate Pump Station and betweeen 24" main and Tank No. 2 at Sara Hill		90,000
T-3	Modify Sugar Estate Pump Station and test 18" mian to Tutu	Modify electrical, chlorine, pump impellors, piping	180,000
T-4	Rehabilitate No. 3 and No. 4 Storage Tanks at Sara Hill	Two 10-MG tanks	1,600,000
T-5	Construct Sugar Estate Storage Tank	One 1-MG tank and 1,000 ft 16"-pipe	650,000
T-6	Modify Pump Station No. 2 at Sara Hill and convert 24" main from gravity flow to pressure main	New 24" supply mains and electrical modications	300,000
T-7	Replace transmission main to airport	4,500 ft 10"-pipe	200,000
T-8	Rehabilitate Charlotte Amalie distribution System and add main line meters for leakage control. (Phase 1)		680,000
T-9	Rehabilitate Charlotte Amalie distribution system and add main line meters for leakage control. (Phase 2)		320,000
T-10	Replace Harwood Highway Main	10,000 ft-10" main	550,000
T-11	Replace old mains in Bournefield		245,000

Table 3--Continued

Map Code	Project Description	Project Components	Estimated Cost
T-12	Rehabilitate pump station electrical systems	Upgrade to meet code and and reduce safety hazards	150,000
T-13	Install backflow prevention devices		145,000
T-14	Construct Lower Tutu and Bovoni transmission mains	11,000 ft-12" main	510,000
T-15	Construct Gomez School Storage Tank and Bovini Tank	One 2-MG tank, one 1-MG tank	1,380,000
T-16	Construct Bolongo Bay Transmission Main	4,000 feet-12" main	150,000
T-17	Construct Old Tutu Storage Tank, New Tutu Storage Tank, transmission main to Old Tutu Tank and modify Old Tutu and New Tutu distribution systems	Two - 0.5 MG tanks, 2,500 ft-12" main and other piping modifications	1,075,000
T-18	Install service connections in existing Old Tutu and New Tutu distribution systems	800 services	240,000
T-19	Construct transmission mains to Hidden Valley and The Valley	9,000 ft-8"	300,000
T-20	Construct Berg Hill and Nana Hill Storage Tanks	Two-2-MG tanks	1,680,000
T-21	Construct storage tanks at Bunker Hill, Frenchman Hill, and Altona Construct tank feeder mains	Three-0.5 MG tanks 9,000 ft 8" main	1,600,000

Table 3--Continued

Map Code	Project Description	Project Components	Estimated Cost
T-22	Construct Anna's Retreat storage tank and transmission main	One-2 MG tanks 7,000 ft-12" main	1,120,000
T-23	Construct Nadir transmission main	6,000 ft 8" main	200,000
T-24	Construct Vessup Bay transmission main	15,000 ft 12" main	585,000
T-25	Construct Nazareth transmission main	4,000 ft 10" main	145,000
T-26	Construct storage tanks at Casi Hill and Frydendal and Frydendal transmission main	One 0.5 MG tank, one 1.0 MG tank, 2,000 ft 12" main	1,100,000
T-27	Construct Smith Bay transmission main	14,000 ft 12" main	545,000
T-28	Construct Wintberg Peak storage tank, pumping station and transmission main	One-0.5 MG storage tank, 5,000 ft-8" main, 1.0 MGD pump station	755,000
T-29	Construct Lovenlund transmission main, Lovenlund Storage Tank and Mandal Storage Tank	10,000 ft-10" main, One 0.5 MG tank, one	1,290,000
T-30	Construct Lower Donoe Storage Tank	One - 1.0 MG tank	540,000
T-31	Construct Hoffman Transmission Main	5,000 ft-12" main	200,000
T-32	Construct Brewer's Bay Pump Station, Bonne Esperance transmission main and storage tank	One - 0.5 MGD pump station, 9,000 ft-8" main,	550,000

Table 4
ESTIMATED COSTS FOR INSTALLATION OF DISTRIBUTION SYSTEMS AND CONNECTIONS WITHIN DISTRIBUTION DISTRICTS ON ST. THOMAS

Project No. Map Code	Description	Type	Estimated Cost[a, b]
T-A	Mangrove Lagoon	FC	$ 300,000
T-B	The Valley	SC-T	194,000
T-C	Hidden Valley (Ph. 1)	SC-T	194,000
T-D	Hidden Valley (Ph. 2)	SC-T	640,000
T-E	Anna's Retreat	SC-T	1,104,000
T-F	Lower Tutu	SC-T	600,000
T-G	Thomasville	FC	240,000
T-H	Nazareth	FC	2,100,000
T-I	Frydendal	SC	1,687,000
T-J	Smith Bay	FC	618,000
T-K	Wintberg Peak	SC	1,365,000
T-L	Mandal	SC	644,000
T-M	Nadir	SC	1,085,000
T-N	Hoffman	FC	654,000
			Total = $11,425,000

Note: Type construction: FC = Flat country; SC = Steep country; T = Town.

[a] Covers distribution throughout stated area shown on map (Figure 2), with average density of 4 units/acre.

[b] Order of magnitude cost estimates which include all materials (pipe, hydrants, and individual and master meters); installation; repairs to roads, sidewalks, etc.; engineering; bid documents and plant; and inspection and testing. The estimate was based on all work being done by outside contractors.

FUNDING REQUEST SUMMARY

The following is a summary of the projects for which the funds are requested for water supply related capital improvements in the Virgin Islands.

Fiscal Year 1983

St. Croix		
1.	Construct a 5-MG tank at Dolby Hill (C-2)	$1,660,000
St. Thomas		
1.	Construct a 1-MG tank at Sugar Estate (T-5)	650,000
2.	Rehabilitate the old distribution system Charlotte Amalie - Phase 1 (T-8)	690,000
	Total	$3,000,000

Fiscal Year 1984

St. Croix		
1.	Modification and repairs to the 10 MG tank at Richmond (C-8)	$ 700,000
St. John		
1.	Expansion of the distribution system in Cruz Bay-Phase 1 (J-A)	200,000
St. Thomas		
1.	Rehabilitate the old distribution system in Charlotte Amalie-Phase II (T-9)	320,000
2.	Replace the 6 inch pipe in Harwood Highway (T-10)	550,000
3.	Rehabilitate the distribution system in Bournefield (T-11)	245,000
4.	Rehabilitate electrical controls in the pump stations (T-12)	150,000
5.	Install backflow prevention devices (T-13)	145,000

Table 3--Continued

Map Code	Project Description	Project Components	Estimated Cost
T-33	Construct Bonne Esperance pumping station, and Santa Maria transmission main and storage tank	One 0.5-pump station 6,000 ft-8" main, One 0.2 MG tank	530,000
T-34	Construct Fortuna Bay transmission main and storage tanks	18,000 ft-6" main One 0.1 MG tank	900,000
T-35	Develop Well Fields		700.000
T-36	Rehabilitate existing distribution system		4,000.000
	Total		$25,255.000

Notes:

1. All cost figures in this report are order-of-magnitude estimates. These are approxiamte estimates, made without detailed engineering data. It is normally expected that an estimate of this type would be accurate within +50% and -30%.

2. All work is estimated including engieering, inspection, testing, and construction bya private contactor.

3. MG = million gallons, mgd = million gallons per day.

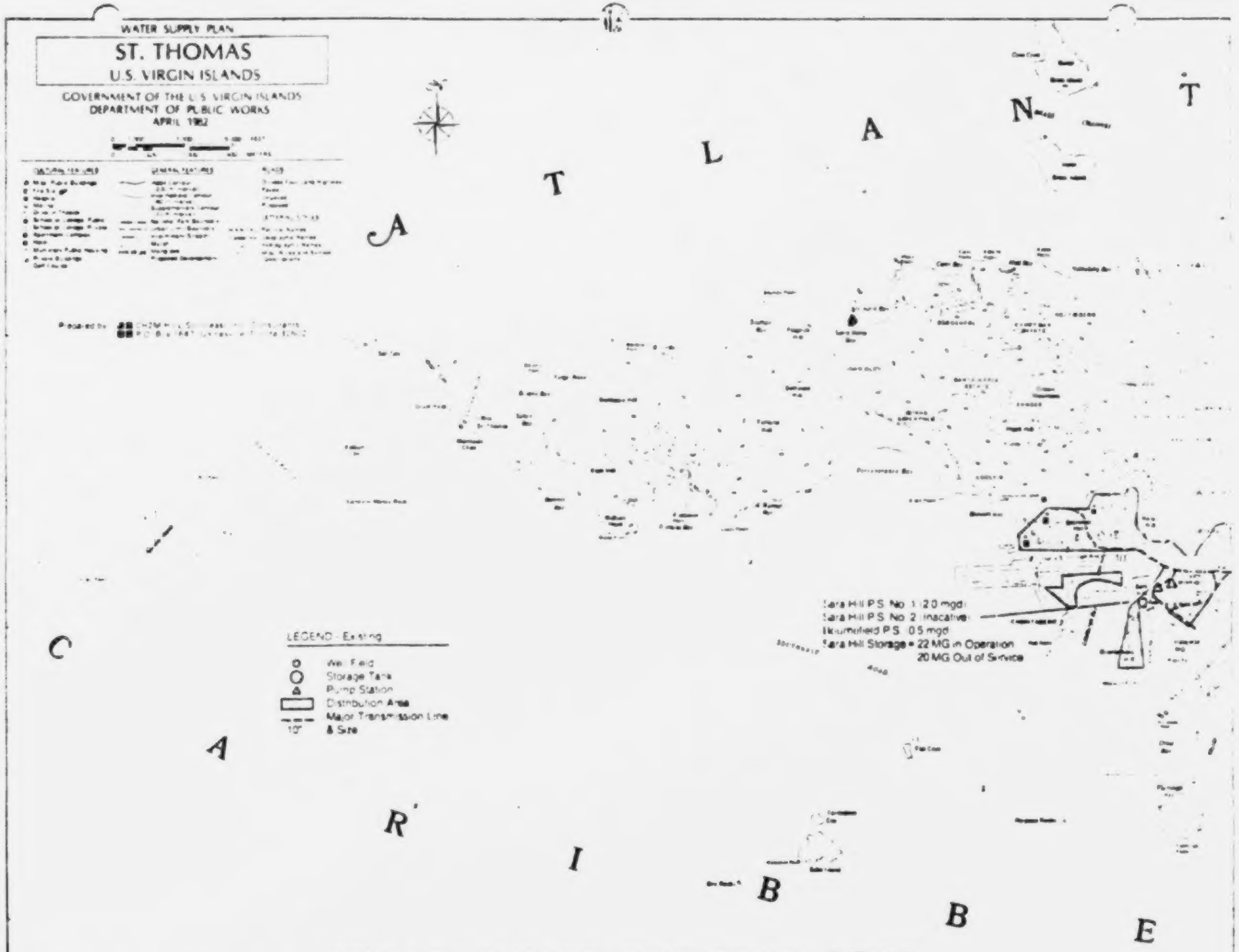
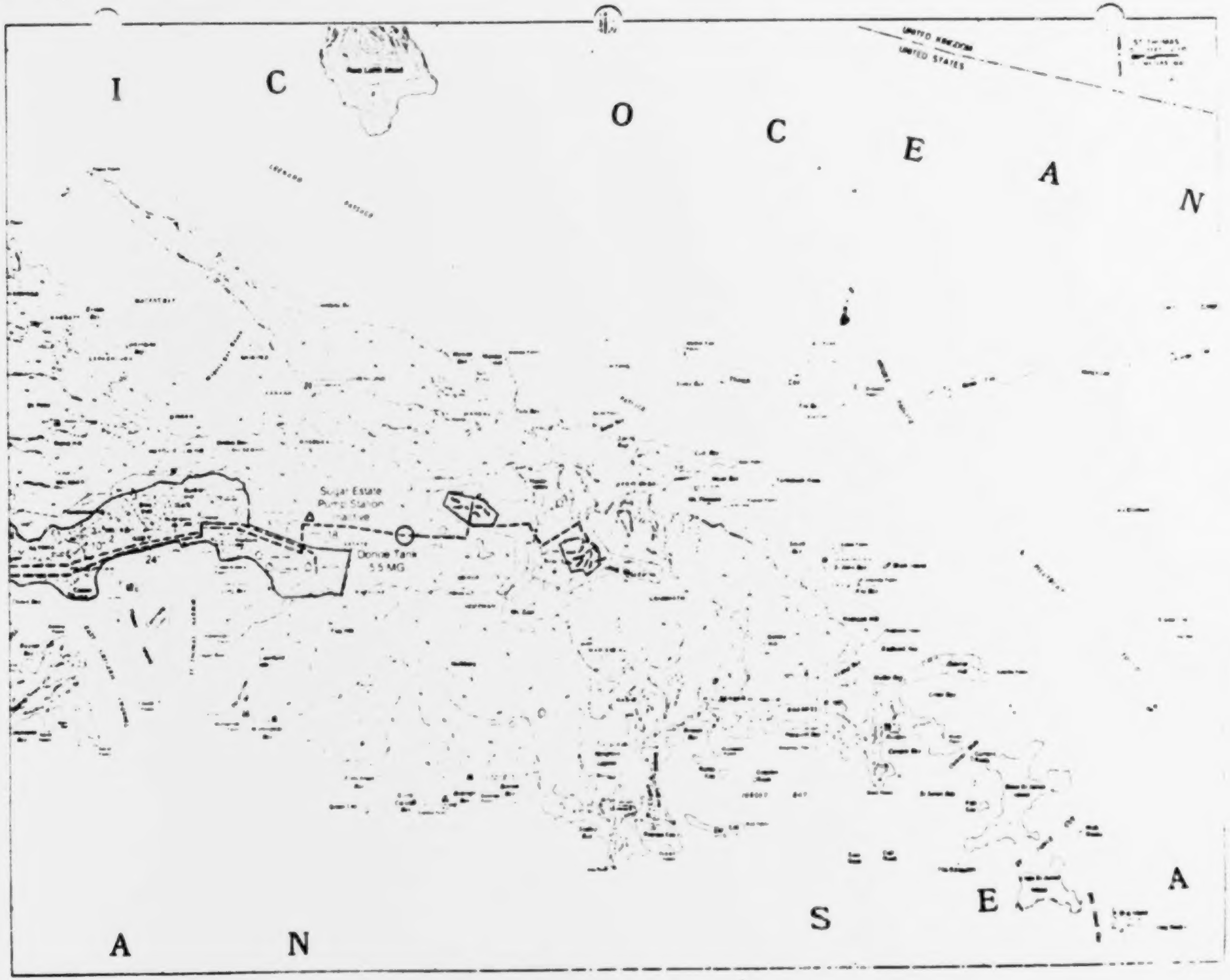

WATER SUPPLY PLAN
ST. THOMAS
U.S. VIRGIN ISLANDS
GOVERNMENT OF THE U.S. VIRGIN ISLANDS
DEPARTMENT OF PUBLIC WORKS
APRIL 1982
ATLANTIC
CARIBBEE
Sara Hill P.S. No. 1 (2.0 mgd)
Sara Hill P.S. No. 2 (inacative)
Bournefield P.S. 0.5 mgd
Sara Hill Storage = 22 MG in Operation
20 MG Out of Service
LEGEND - Existing
Well Field
Storage Tank
Pump Station
Distribution Area
Major Transmission Line
10" & Size

FIGURE 1. Present public potable water distribution system — St. Thomas.


I C
O C E A N
UNITED KINGDOM
UNITED STATES
Sugar Estate
Pump Station
(Inactive)
Donoe Tank
5.5 MG
24"
A N
S E A

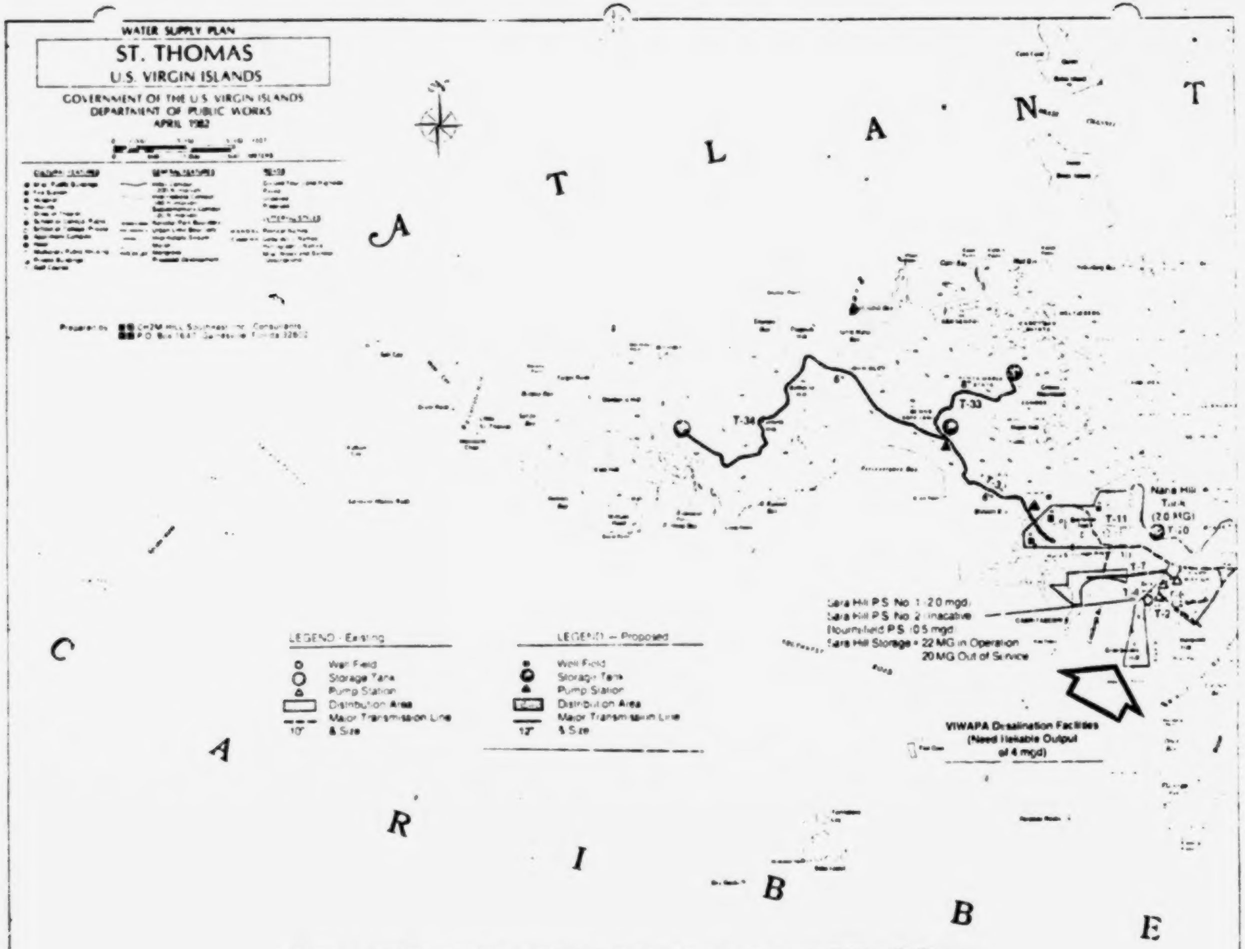
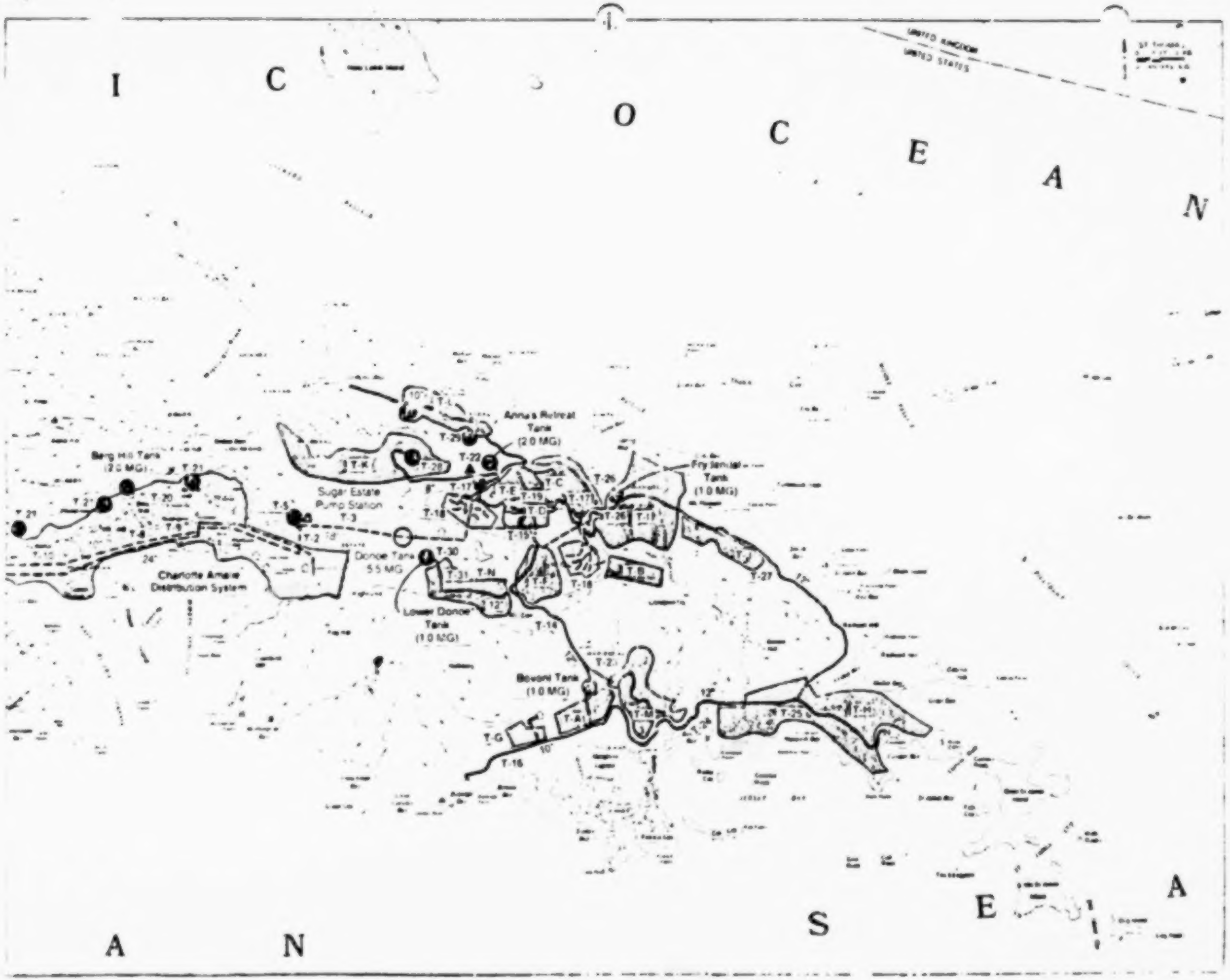

WATER SUPPLY PLAN
ST. THOMAS
U.S. VIRGIN ISLANDS
GOVERNMENT OF THE U.S. VIRGIN ISLANDS
DEPARTMENT OF PUBLIC WORKS
APRIL 1982
Prepared by CH2M Hill Southeast Inc. Consultants
P.O. Box 1647 Gainesville Florida 32602
A T L A N T
T-34
T-33
T-3
T-11
Nana Hill
Tank
(2.0 MG)
T-10
T-7
T-4
T-2
Sara Hill P.S. No. 1 (2.0 mgd)
Sara Hill P.S. No. 2 (inactive)
Bournefield P.S. (0.5 mgd)
Sara Hill Storage = 22 MG in Operation
20 MG Out of Service
VIWAPA Desalination Facilities
(Need Reliable Output
of 4 mgd)
LEGEND - Existing
Well Field
Storage Tank
Pump Station
Distribution Area
Major Transmission Line
10"
& Size
LEGEND — Proposed
Well Field
Storage Tank
Pump Station
Distribution Area
Major Transmission Line
12"
& Size
C A R I B B E

FIGURE 2. Projected public potable water distribution system by year 2000 — St. Thomas.


I
C
O
C
E
A
N
UNITED KINGDOM
UNITED STATES
Berg Hill Tank
(2.0 MG)
T-21
T-21
T-21
T-20
T-9
T-4
T-10
24"
Charlotte Amalie
Distribution System
T-5
T-2
T-3
Sugar Estate
Pump Station
Donoe Tank
5.5 MG
Lower Donoe
Tank
(1.0 MG)
10"
T-L
T-K
T-28
T-29
T-22
Annas Retreat
Tank
(2.0 MG)
8"
T-17
T-E
T-C
T-19
T-18
T-D
T-15
T-30
T-31
T-N
12"
T-26
T-17
T-26
T-17
Fry Sensial
Tank
(1.0 MG)
T-B
T-16
T-J
T-27
T-14
T-2
Bovoni Tank
(1.0 MG)
T-A
T-G
10"
T-16
T-M
12"
T-24
T-25
T-H
A
N
S
E
A

6.	Construct transmission line from Tutu to Bovoni (T-14)	510,000
	Total Estimate in 1982 Dollars	2,820,000
	and 6% increase for inflation	180,000
	Total Estimated Cost	$3,000,000

Fiscal Year 1985

St. Croix

1.	Construct the La Reine segment of the high pressure transmission line (C-10)	$ 770,000
2.	Renovate electrical controls in well fields and pumping stations (C-26)	100,000

St. John

1.	Expansion of the distribution system in Cruz Bay-Phase II (J-A)	200,000

St. Thomas

1.	Construct the tanks at Bovoni (1 MG) and Gomez School (2 MG) (T-15)	1,380,000
2.	Construct a distribution system in the Mangrove Lagoon area-Phase I (T-17)	220,000
	Total Estimated in 1982 Dollars	$2,670,000
	and 13% increase for inflation	330,000
	Total Estimated Cost	$3,000,000

Fiscal Year 1986

St. Croix

1.	Replace the old lines in Frederiksted (C-5)	450,000
2.	Repair the 1-MG tank at Recovery Hill (C-12)	300,000

St. John

1. Expansion of the distribution

system in Cruz Bay-Phase III	100,000
St. Thomas	
1. Construct a distribution system in the Mangrove Lagoon area-Phase II (T-A)	80,000
2. Construct 2 0.5 MG tanks, and install pipeline in the Tutu area to permit pressure control and storage in the System (T-17)	1,075,000
3. Install services to about 800 homes in the Old and New Tutu areas (T-18)	240,000
4. Construct transmission lines to Hidden Valley (T-19)	275,000
Total Estimated Cost in 1982 Dollars	$2,520,000
and 19% Increase for Inflation	480,000
Total Estimated Cost	$3,000,000

Notes

1. All cost estimates in this report are based on mid 1982 prices. Under normal market conditions, these should be adequate into early FY 1983. After this time (FY 1984 and beyond) an inflation factor should be used. Assuming that the current Administration and Congress will hold inflation in check we have used an increase of approximately 6 to 7 percent per year.

PLAN COST ESTIMATES

The master plan has been developed as a guidance document to be used, as required, for the next 20 years. Although its possible that all the construction outlined in it may be necessary it is acutally doubtful that it will.

Distribution Service Districts

The plan outlines the location and construction costs for a possible 40 distribution districts and identifies them by a lettered code (T-A, C-Z, J-B, etc.). Many of these designated areas are sparsely settled now and may remain that way in the future but if they are developed the detain tables 2, 4, and 6 will provide the estimated cost of placing distribution piping and house services in each area. On St. Croix, as an example, 24 potential distribution districts are shown. It is very probable that in the future that less than half of these districts will have a population density sufficient to warrant the installation of a full distribution system. Although growth is directed by zoning, coastal zone regulations , etc., it is not possible to predict now exactly which of the areas will be developed in the future. however, the plan for the transmission network makes it possible to transfer adequate water to any of these designated districts for internal distribution.

Thus the approximately $42 million shown for distribution within service districts would only be spent if all the districts were fully developed. This is considered highly improbable on a demographic basis and the cost is more likely to be about $20 million (in 1982 dollars) over the next 20 years, rather then the $40 million shown.

Production, Transmission, and Storage Facilities

The section of the plan which deals with the production, transmission, and storage facilities (numbered projects, i.e., T-3, C-28 etc.) is designed, like the distribution systems, so that there are more projects listed than will be built during the next 20 years. Although in the short-term it is clear which projects are needed, on a long-term basis the pattern of development on each of the islands will determine which projects will ultimately be needed. We have, and will continue to review the priorities to fit the execution of the plan to the realities of the situation. The sizing of facilities has been done to permit the system to respond to different, and hopefully even unexpected, changes in development in the Territory.

Out of the approximately $59 million estimated for these capital it is expected that about $45 to $50 million will be needed by the year 2000.

Summary

Given the premise that the water supply plan covers all reasonable possibilities of development in the Territory it is expected that the capital cost involved with upgrading and expanding the system would run in the order of about $65 to $70 million. These costs could be reduced to some degree, perhaps 10 to 15 percent, by performing much of the work using local government forces instead of private contractors although is it is acknowledged that there is often hidden costs involved in this.

EXHIBIT E

ESTIMATED COST OF JUVENILE PRETRIAL DETENTION FACILITIES FOR THE DISTRICTS OF ST. THOMAS/ST. JOHN AND ST. CROIX, U.S.V.I.

	St. Thomas/St. John	St. Croix
Site (a) Purchase	161,000	-0-
(b) Preparation	36,000	82,000
(c) Fencing, etc.	-0-	31,000
Fees (a) Architectural	60,000	60,000
(b) Inspection & Engineering	18,000	18,000
Construction	938,000	925,000
Equipment (Non Expendable)		
(a) Fixtures	97,000	97,000
(b) Furniture	104,000	104,000
Security Systems	45,000	55,000
Contingency (6%)	87,000	82,000
	1,546,000	1,454,000

Data

Square footage (interior)	9,655 (two story)	9,500 (1 story)
Special Features:	Screening/Intake areas	Screen/Intake Areas
	Judges' Hearing Room	Judges Hearing Room
	Classroom	Classroom
	Interview Room	Interview Room
	Holding Rooms (2)	Holding Rooms (2)
	Sleeping Rooms 14	Sleeping Rooms 14
	2,376 sq. ft. Rec. area-roof top	4,292 Exterior recreation area

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20531

19 AUG 1977

CERTIFICATE FOR PROJECT REVIEW

TO: Economic Development Administration ("EDA")

FROM: George H. Bohlinger, III. Deputy Assistant Administrator
Law Enforcement Assistance Administration (LEAA)
U.S. Department of Justice

SUBJECT: Project Review Certificate Pursuant to Memorandum of Understanding Between the Department of Commerce, Economic Development Administration and the Department of Justice, Law Enforcement Assistance Administration

APPLICANT: Government of the Virgin Islands
Department of Public Works

ADDRESS: c/o Bill Cunningham, Law Enforcement Planning Commission
P. O. Box 280
St. Thomas, Virgin Island 00801

TELEPHONE: (809) 774-6400 - Bill Cunningham

BRIEF DESCRIPTION OF PROJECT:

Construction of Juvenile Pre-Trial Detention Center for St. Thomas and Juvenile Pre-Trial Detention Center for St. Croix

CONFINEMENT FACILITY PROJECT:

The LEAA has completed its review of the above described confinement facility project, and, in connection therewith, certifies as follows:

I. ☐ That there is compliance with subparts (4) (5) (6) (8) (9) of Section 453, Part E, Omnibus Crime Control and Safe Streets Act of 1968, as amended.

II. ☒ Certification is conditional, pending receipt of required Part E, information (see checked subparts below)

☒ (4) Description of existing, or planned community based, rehabilitative services that will be made available to those
[illegible]

the proposed facility; ie - diagnostic services, work-release, pre-release, and other supervisory release programs

☒ (5) Provide for advanced techniques in the design of institution or facility (National Clearinghouse)

☒ (6) Provide where feasible and desirable, for the sharing of correctional institutions and facilities on a regional basis

☒ (8) Assurance of projects and programs to improve the recruiting, organization, training, and education of personnel employed in the facility, -ie- education and special training of personnel employed in the facility, description of recruitment procedures and organizational structure of the facility.

☒ (9) Provide assurances and description of treatment services and programs available (on a voluntary basis) to drug and alcohol addicted persons. (services may be provided from within the facility or made available from the outside community)

(See attached MEMO) III. ☒ Applicant is not in compliance and must submit required Part E. information to LEAA, D.C. Office within 30 days to permit furth processing.

IV. ☐ If any analyses or enviormental impact statement has been prepared by LEAA in connection with this project, a copy will be attached

(a) ☐ Attachment

(b) ☒ No Attachment

George H. Bohlinger
Deputy Assistant Administrator

national clearinghouse for criminal justice planning and architecture

August 22, 1977

TO: Warren Eagles

FROM: Jason Papelka
Architectural Specialist

RE: St. Croix and St. Thomas, Virgin Islands proposed pretrial detention/diversion centers. These facilities will provide secure pretrial intake and holding capabilities that are presently nonexistent on the Islands. NCCJPA #1438-JPW

CONTACT: Glenn R. Tobey, Director of Planning
VILEPC
P. O. Box 280
St. Thomas, Virgin Islands 00801

The National Clearinghouse for Criminal Justice Planning and Architecture has completed a thorough review of the proposed detention facilities.

The National Clearinghouse certifies that this project, as revised, meets the standards established in section (1) (Part E Amendment, Section 455, Subparts 5 and 7), (2), (3), and (4) of the EDA - LEAA Memorandum of Understanding.

The required revisions, which have been jointly agreed upon by the applicant and the Clearinghouse, include:

1. The development and availability of a procedures manual to include:
   - emergency medical procedures;
   - intake criteria that are court approved;
   - confinement/isolation policies and procedures to ensure adequate supervision and safeguards from abuse;
   - telephone and mail privileges;
   - grievance procedures; and
   - policy statement on the use of force by staff.
2. Reorientation of the bedroom plumbing fixtures within the St. Croix facility to be back-to-back and screened from the exterior window.
3. Provision for laundry needs through program and/or facility response(s) at the St. Croix facility.
4. Adequate sound isolation between adjacent bedrooms. (47 stc).

As further recommendations, and not conditions for certification, the following points are made:

1. A bathtub is desirable for hygenic and/or first-aid usages.
2. A single means of egress and/or the spiral staircases may be in conflict with local building and/or fire codes.
3. Stainless steel plumbing fixtures should not be necessary for all bedrooms.

EXHIBIT F

CAPABILITY STATEMENT

Agency/Bureau: Department of the Interior/ Territorial and International Affairs

Appropriation: Administration of the Territories for the U.S. Virgin Islands

Activity: Government of the U.S. Virgin Islands

Proposed Amendment: $3,000,000 (three million dollars) to construct and equip two Pretrial Detention/Diversion Centers for juveniles who are alleged to have committed major crimes in the Territory. One center to be located on the Island of St. Croix, and one on the Island of St. Thomas.

Current Program:

At present, the Territory of the U.S. Virgin Islands does not have juvenile pretrial detention facilities. For FY-81, some 709 (seven-hundred and nine) juveniles were apprehended for FBI-Uniform Crime Reporting defined crimes (Part I Crimes) such as homicide, rape, robbery, aggravated assault, burglary, auto theft, and arson. These juveniles could not be held by the Police due to the fact that there are no facilities for such purpose. Of the 709 juvenile apprehensions, some 240 were waived over for trial as adults. The remaining 469 juveniles had to be turned back into the community where many of them committed additional crimes.

This problem situation has been on the increase over the past few years. In FY-79 there were 567 juvenile apprehensions for Part I Crimes. By FY-81 that figure had increased to 709, representing a 25% increase in the number of apprehensions. The 709 figure represents a full 53% of all Part I apprehensions in the Territory for FY-81. Thus, over half of the Territory's criminal perpetrators cannot be effectively apprehended and detained due to lack of facilities.

The net result of this escalating problem is that the social fabric and the economy of the U.S. Virgin Islands is increasingly threatened by progressively more bold and daring juvenile crimes. The courts are left with no alternative but to waive the most serious offenders over to be tried as adults, an unfortunate practice which tends to graduate juveniles into the ranks of adult offenders. With the exception of the District of Columbia, the U.S. Virgin Islands has a higher Part 1 Crime rate per 100,000 population than any other state or territory. This conculsion is based upon FBI Uniform Crime Reports for 1980 (Crime in the United States--1980) as compared with UCR statistics for the U.S. Virgin Islands for FY-81. Although the calendar year 1980 figures do not provide an exact comparison basis with fiscal year 1981 figures for the U.S. Virgin Islands, the substantive comparison nevertheless gives a realistic picture of Part I Crimes in the U.S. Virgin Islands.

The economy of the U.S. Virgin Islands, based as it is upon tourism, cannot continue to sustain this high juvenile crime rate. While the crime rate itself is of critical concern, its import becomes all the more grave when one considers that some 34.7% of Virgin Islands youths age 22 and under were unemployed in 1980 according to the V.I. Division of Labor Statistics. Finally, it is estimated that at least half of Virgin Islands high school students due not complete high school.

The foregoing bleak scenario is not meant to convey the impression that the Government of the Virgin Islands has not addressed this problem in a very concerted manner. Quite to the contrary, a well-planned approach has been followed over the past few years which has been based upon the "least restrictive approach" mandated by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. Key initiatives at the Territorial level are as follows:

1. 1978: A comprehensive Youth Services Administration was designed and implemented under the Office of the Governor. This is the single state agency for delinquency prevention and other delinquency specific programs.

2. 1978: A Youth Rehabilitation Center was opened by YSA on the Island of St. Croix. It can serve up to 23 adjudicated juvenile delinquents.

3. 1980: A YSA Foster Home Placement Program was put in place. It now provides alternative living environments for selected youths on St. Croix, and on St. Thomas.

4. 1982: A Boys Group Home was opened on St. Thomas. It has a capacity of 8 and is operated by the Salvation Army under contract to YSA.

5. 1982: A Girls Group home will soon open on St. Croix. It will have a capacity of 8 girls. It will be operated by a private service provider under contract to YSA.

6. 1982: Two Youth Shelter Care Facilities, one for St. Thomas and one for St. Croix, will be opened by late fall at a cost of approximately $912,000 in territorial funds matched by some $232,000 in LEAA monies. Each facility will house up to 10 youts in a non-secure setting for up to 30 days while a complete work-up and evaluation for individualized programming is completed.

7. 1982: The Virgin Islands Juvenile Criminal Code has been comprehensively rewritten and updated. It is now before the 14th Legislature of the Virgin Islands. It is a "state of art" code which contains a "Territorial Youth Policy." Its approval and full implementation are anticipated this calendar year.

8. 1982: An Alternative Education Project has been funded for the past two years by the Office of Juvenile Justice and Delinquency Prevention at Elena Christian Junior High School on St. Croix. It has been extremely successful, and has generated replication projects in other schools with funding being provided by the V.I. Department of Education.

9. 1982: A Youth Multi-Service Center has been incorporated on St. Thomas as a new Public?Private Sector approach to pre-employment skills training and alternative education for school drop-outs. It is based upon the highly successful New York "Door" model. This center should open in June of this year.

10. 1982: A Youth Diversion/Restitution Project will soon be operationalized through funds provided by the Office of Juvenile Justice and Delinquency Prevention. This project, to be operated by YSA, will provide judges with diversionary alternatives whereby youths may be placed in either public or private sector job positions to provide restitution to the victim and/or the community.

These are but a few of the major initiatives now under way. Without appropriate facilities to house juveniles alleged to have committed a major crime, the Territory will continue to be exposed to serious and violent offenders. This will most certainly undermine the effectiveness of "least restrictive" types of approaches since more and more youths will be filling the ranks of serious offenders.

To date, the schematics for each of the two proposed Juvenile Pretrial Detention/Diversion Centers have been completed. Two architects have been chosen. Program formats have been completed. What now remains is for funding to be secured so that construction may begin. The St. Croix site is owned by the Government of the Virgin Islands, while some $161,000 has been budgeted within the $3,000,000 figure for acquisition of the St. Thomas site. No further progress can be made with currently available funding at the territorial level.

Amount Budgeted for FY-83: NONE

Feasability: With the $3,000,000 increase, the Government of the U.S. Virgin Islands could purchase the needed site for the St. Thomas Pretrial Detention/Diversion Center and construct and equip both the St. Thomas and the St. Croix facilities. This project is of the highest priority.

Capability:

The budgetary explanation for the proposed increase is as follows:

		St. Thomas/St. John	St. Croix
Site	(a) Purchase	$161,000	-0-
	(b) Preparation	36,000	82,000
	(c) Fencing	-0-	31,000
Fees	(a) Architectural	60,000	60,000
	(b) Inspection/ Engineering	18,000	18,000
Construction		938,000	925,000
Equipment (Non-Expendable)			
	(a) Fixtures	97,000	97,000
	(b) Furniture	104,000	104,000
Security Systems		45,000	55,000
Contingency (6%)		87,000	82,000
		$1,546,000	$1,454,000

Data

Square Footage (interior)	9,655 (two story)	9,500 (1 story)
Special Features	Screening/Intake Areas Judge's Hearing Room Classroom Interview Room Holding Rooms(2) Sleeping Rooms 11 Boys 3 Girls Recreation Area 2,376 sq. ft interior	Screening/Intake Areas Judge's Hearing Room Classroom Interview Room Holding Rooms(2) Sleeping Rooms 11 Boys 3 Girls Recreation Area 4,292 sq. ft. exterior
Specifications	Special normative construction materials, windows, doors, etc., for juvenile detention	Special normative construction, etc.

Outlay Effect:

While the actual construction phase may take up to two years to complete, the full amount of funds will be needed during FY-82 to purchase the St. Thomas site, to award construction contracts, to cover architectural/engineering fees and to encumber fixture and equipment documents.

EXHIBIT G

April 1982

RE: JUVENILE PRETRIAL DETENTION/DIVERSION
CENTERS

Statement of Need

For the past several years the Territory of the U.S. Virgin Islands has been taking concerted steps to address its juvenile and adult crime problem. This has not been an easy task. Following the passage of the Juvenile Justice and Delinquency Prevention Act of 1974, the Government of the Virgin Islands has developed and implemented a series of programmatic initiatives to address juvenile crime in accordance with the JJDP Act and its mandate. A chronological list of key accomplishments includes, but is not limited to the following:

1. A comprehensive Youth Services Administration was designed and
implemented under the Office of the Governor. This new agency
1978 has been mandated to address the problems of Juvenile Delinquency
from prevention to post adjudication and dispostion.

2. A youth Rehabilitation Center was opened on the Island of St. Croix
1978 to provide rehabilitational services to youths adjudicated of Part 1
crimes by the courts. This facility has a maximum capacity of 23.

3. A Foster Home placement program was begun through the Youth Services
Administration to provide alternative living environments for youths
1980 whose home environment--or lack thereof--was not conducive to the
development of law abiding behavior patterns for juveniles.

4. A Group Home for Adolescent Boys was opened on St. Thomas, with the
1982 process now under way to open a Group Home for Girls on St. Croix.

5. Two Juvenile Shelter Care facilities, one for St. Thomas and one for
1982 St. Croix, are now in the process of development, and should be open
by the end of this year. Each facility will be able to house up to
ten status offenders for a period of up to thirty days while a complete
evaluation and individualized program are developed.

6. The Virgin Islands Juvenile Criminal Code has been completely rewritten
in a very complete and comprehensive manner. This new code of laws,
1981- referred to as the Virgin Islands Children's Code was submitted to
82 the Fourteenth Legislature of the Virgin Islands in January of this
year and is presently awaiting public hearings. Upon submission of
this new code, I noted that it reflects a balance between sanctions
and treatment, and embodies state of the art thinking in the area of
code revision.

7. A Juvenile Diversion/Restitution Project is soon to be implemented
1982 through the Youth Services Administration utilizing funds provided
by the Office of Juvenile Justice and Delinquency Prevention.

In spite of these very substantial advances in the area of juvenile programming, the Virgin Islands finds itself with a major juvenile crime problem. Roughly half of all public School students do not complete high school. As of 1980, some 34.7% of youths age 22 and under were unemployed, according to the Division of Labor Statistics. A full 53% (709) of total Part 1 crime apprehensions (1,328) for FY-81 were juveniles age 17 and under. Of the 709 apprehensions, some 240 juveniles were formally arrested, with the majority being waived for trial as adults.

Due to the lack of juvenile pretrial facilites on either St. Thomas or St. Croix, the vast majority of juveniles apprehended for Part 1 crimes are released back into the community. This unfortunate practice has contributed to the formation of a cycle of behavior which results in juveniles becoming more bold in their criminal activity due to the fact that they believe that the Criminal Justice System is impotent to deal with their behavior.

The net result of this escalating problem, is that juvenile offenders are regularly tried as adults, and frequently graduate into the ranks of adult offenders. With the exception of the District of Columbia, the U.S. Virgin Islands has a higher Part 1 crime rate per 100,000 population than any other state or territory. This conclusion is based upon FBI Uniform Crime Reports for 1980 (Crime In The United States-1980) as compared with UCR statistics for the U.S. Virgin Islands for FY-81. Although the calendar year 1980 figures do not provide an exact comparrison basis with fiscal year 1981 figures for the U.S. Virgin Islands, the substantive comparrison nevertheless gives a realistic picture of Part 1 crimes in the U.S. Virgin Islands.

At present, the U.S. Virgin Islands doe not have any facilities suitable for pretrial detention of juveniles apprehended for a Part 1 crime. Funds in the magnitude of 3 million dollars far surpass the limited capabilities of the territorial economy of scale, particularly in light of continued federal cut-backs in previously funded programs for the Territory.

Section 1

HIGHPOINTS OF ATTACHED CRIME ANALYSIS - U.S. VIRGIN ISLANDS

1) The V.I. Crime rate when indexed per 100,000 population for comparison purposes, exceeds that of the United States in all Part I (UCR) categories except auto theft.

2) Examples of V.I. serious concerns over specific indexed crimes are as follows:

Agg. Assault	3.7 times higher than total U.S.
Burglary	2.3 times higher than total U.S.
Homicide	11.9 times higher than total U.S.
Robbery	1.8 times higher than total U.S.
Rape	1.5 times higher than total U.S.
Total (Eight Part I Crimes)	1.5 times higher than total U.S.

3) Reported V.I. Part I crime was up 35% for FY'80 over '79 and up 21% for FY'81 vs. '80.

4) The arrest clearance rate for over FY'80 total Part I crimes for the V.I. was low by U.S. standards - 8% vs. 19%.

5) Juveniles who comprise 47% of the V.I. population account for upwards of 55% of Part I crime occurrences (see attached table). This statistic is based solely on the perpetrators who are apprehended.

6) A final table is included to provide a more accurate picture of the juvenile crime situation by reclassifying juvenile offenders as if they were adults.

Note: All juvenile statistics in the V.I. and elsewhere in the U.S. are not comparable to adults, therefore it is difficult to get a true picture of the Modus Operandi or perpetrator profile.

TABLE A

PART I CRIME INDEX RATE-REPORTED CRIMES
V.I. VS. TOTAL U.S.
(PER 100,000 POPULATION)

	FY 1981 Virgin Islands	Calendar 1980 United States
Homicide	19.5	10.2
Rape	54.8	36.4
Robbery	447.2	243.5
Agg. Assault	1,083.7	290.6
Burglary	3,756.1	1,668.2
Larceny (Theft	3,178.0	3,156.3
Auto Theft	357.7	494.6
Arson	36.6	N/A
Total	8,933.6	5,899.8

Source: Population base - 123,000 - V.I. Dept. of Health - Vital Statistics; FBI/UCR 1980 Report.

TABLE B

TOTAL U.S. VIRGIN ISLANDS
REPORTED PART I CRIMES BASED ON UCR (FBI) DEFINITIONS

	FY 1979	FY 1980	%+/-	FY 1981	%+/-
Homicide	19	23	21%	24	4%
Rape	52	68	31%	67	-
Robbery	288	487	69%	550	13%
Assault	905	1,142	26%	1,333	17%
Burglary	2,601	3,584	38%	4,620	29%
Larceny-Theft	2,486	3,189	28%	3,909	23%
Auto Theft	387	551	42%	440	(20%)
Arson (1)	N/A	27	-	45	67%
Total	6,738	9,071	35%	10,988	21%
Arrests:					
Adult				619	
Juvenile				240 (2)	
Total:				859	

(1) In FY- 1979 arson was not included in national Part I statistics.
(2) Official arrests- does not include juveniles "contacted"

Notes:

UCR (Uniform Crime Reports) are tabulated by the FBI for the annually published "Crime in the U.S.".

Source:

DPS Record Section

TABLE C

V.I. ARRESTS PER CRIME -% RATE ARRESTS vs. REPORTED CRIMES

	U.S. 1980 %	V.I. 1981%
Homicide	72%	50%
Rape	49%	39%
Robbery	24%	18%
Agg. Assault	59%	22%
Burglary	14%	4%
Larceny (Theft)	18%	.5%
Auto Theft	14%	8%
Arson	N/A	2%
Total	19%	8%

Note: Minors arrested-not including juveniles "contacted"- comprise 28% of the total arrests.

Source: DPS Records
LEPC 3-19-82
UCR-FBI
1980

TABLE G

TOTAL V. I. JUVENILE CONTACTS/ARRESTS AS RECLASSIFED BY LEPC USING UCR DEFINITIONS

	FY 1979	FY 1981	%+/-
Homicide	2	0	-
Rape	21	17	(19%)
Robbery	25	44	76%
Agg. Assault	114	103	(10%)
Burglary	114	178	56%
Larceny	264	320	21%
Auto Theft	13	41	215%
Arson	14	6	(57%)
TOTAL	567	709	25%

SOURCE: FBI Crime in the U.S. 1980
LEPC/DPS 3-2-82

Section 2

Kinds and Frequency of Crimes Committed

In preparation of this section, I have had conversations with Commissioner Otis L. Felix and Lieutenant John James, Director of Planning for St. Thomas/St. John, as well as Deputy Chief for St. Croix, Ohanio Harris.

Homicide

Since November, 1981, six homicides have been committed on St. Thomas, with another three homicides on St. Croix. Characteristic wise, we have the following information:

- Of the six St. Thomas homicides, one was directly drug related, while another is strongly suspected of being drug related. Of the three St. Croix homicides, one was directly drug related, while the other two appear to be indirectly related to drugs (i.e., one of the homicides took place in an area were drug sales are known to take place. It is speculated that robbery to obtain funds for drug purchase was the motive for the homicide).
- Each of the nine homicides appears to have been a "stranger to stranger" type of crime as opposed to homicides wherein family disputes give rise to the homicide.
- In several of the homicide cases where robbery was involved, the homicide reportedly occured after the robbery had taken place, leaving one to speculate as to what the actual motive for the homicide was.
- For FY-'81, some twenty-three arrests cleared twelve homicides. This factor, as well as witness reports, tend to support the supposition that most of the homicides involved more than one perpetrator.
- Homicides appear to increase during the months of October-March.

Department of Public Safety officials state that they do not believe that the homicides are the result of organized or centrally directed activity. This does not, however, close out the possibility of such linkages. At this time, such linkages simply have not been established.

What is known is that unemployment for the Virgin Islands for youths age 22 and under was 34.7% for 1980 according to the V.I. Department of Labor, Division of Labor Statistics. What is also known is that there exists a wide disparity in incomes within the Territory between the "haves" and the "have-nots".

Aggravated Assault

No particular trends have emerged to date. What we do know is that this particular crime is very much on the upswing, and that it poses a serious threat to our economy which is based on tourism.

Rape

Rape has taken a very sharp upswing during the past two years. There was a 31% increase in reported rapes from FY-79 to FY-80. The rate remained basically constant during FY-81, but is presently increasing at a very rapid rate. A significant number of perpetrators were juveniles.

Thus far, robbery was implicated in a significant number of rapes committed recently. In addition, many of the rapes follow the pattern of "power" or "control" types of rapes, as opposed to rapes committed by persons who are mentally deranged.

Robbery

Robbery has increased dramatically over the past two years, with the inclusion of homicide and/or rape as a concomitant factor. Here to, it appears as if multiple perpetrators are involved in a significant number of cases. Juveniles have been increasingly involved in robbery.

Larceny-Theft

This crime category has also increased at a steady rate over the past two years. As with robbery, multiple perpetrators are frequently involved. There has been a marked increase in juvenile perpetrators.

Burglary

Burglaries, particularly residential burglaries, have increased by some 29% over the past two years. This category of crime shows that juveniles involved in burglary have increased by 56% from FY-79 to FY-81.

The Territory of the U.S. Virgin Islands, when compared with two sister territories, evidences the following crime rates for FY-79, using UCR Part 1 Crimes per 100,000 population:

	Number	Rate per 100,000
U.S. Virgin Islands	6.738	7,019
Guam	3,458	3,576
American Samoa	523	1,609

It should be noted that the above figures are based upon official U.S. Census data. Quite obviously, the Virgin Islands crime problem is almost double to the crime problem for Guam which has roughly the same population.

Section 3

Action Steps Taken To Reduce Crime

I. System-Wide Activities

Detection/Apprehension

- A Major Crimes Unit was created within Public Safety, which was subsequently divided into two units: Crimes against persons, and Crimes against property. This allows for greater focus on specific crime solving techniques.

- Additional police officers were assigned to the Investigations Unit.

- District transfers of investigators was effected to concentrate efforts. In this regard, one K-9 team was also brought from St. Croix to St. Thomas on a temporary basis.

- Some 22 Police investigators, as well as 8 Department of Law investigators completed an FBI Crime Profiles training course on St. Thomas, with the same course scheduled for St. Croix in the near future.

- Some 52 Police recruits are now undergoing training.

- The Narcotics Strike Force within the Department of Law has drastically increased its successful seizure of dangerous drugs under the direction of a new unit head recently appointed by the Governor.

- FBI forensic assistance will begin on St. Thomas as of Monday, March 22, 1982 with the goal of concluding a needs and capability assessment. Funds have been approved for the Department of Law to purchase necessary laboratory equipment. Legislation was submitted by the Governor to create a Territorial Medical Examiner's Office, and to increase the scope and functions of the present Crime Laboratory within the Department of Law. (The V.I. Legislature did not approved this proposed legislation).

- Legislation was submitted by the Governor to increase the authority of the Commissioner of Public Safety. This proposed legislation to give the Commissioner more direct control of Public Safety is now pending before the V.I. Legislature.

- Legislation, modeled on the Washington, D.C. statute, was introduced to provide for pretrial holding of persons held to be dangerous to the community. This bill did not pass the Legislature.

- Legislation was introduced and passed to provide two attorneys for the Department of Public Safety.

II. Community-Oriented Activities

- Community leaders from the private sector were involved in a day-long crime seminar with the Governor, various department heads, the FBI, Customs, the Territorial Court, the U.S. Attorney, etc. Specific recommendations of this meeting of February 20, 1982 have been acted upon and advanced at a follow-up meeting with the Governor on March 10, 1982.
- Legislation was submitted to address school vandalism, as well as to provide strong penalties for adults who induce delinquent behavior among juveniles.
- Legislation was also introduced to provide stiffer penalties for possession of unlicensed hand guns.
- Some 25 neighborhood watch groups were organized through the Department of Public Safety on St. Thomas alone.
- The LEPC Victim/Witness Project trained some 96 persons to serve as Rape Victim Advocates, thereby tapping a very significant volunteer sector to assist crime victims.
- Legislation is being prepared to address parental neglect as concerns the Territory's curfew law, and growing delinquency problems.
- Legislation was also introduced to provide stiff penalties for persons intemidating or threatening a witness. Bills were also put forth to create witness protection funds.
- Two Police Canine Corps are now in operation. Each unit is funded by community donations, as well as funds provided by the Law Enforcement Planning Commission.
- The Law Enforcement Planning Commission was recently appointed as the territorial affiliate of the National Council on Crime and Delinquency. LEPC will be responsible for implenting the McGruff "Take a Bite Out of Crime" campaign on a territorial basis.

TABLE D

JUVENILE POPULATION TRENDS - AGES 5 THRU 17

	1970	1979	% Change
Total Population	75,151	115,500	+ 54%
Total Juvenile Population	20,697	30,498	+ 47%
% Juvenile of Total	27.5%	26.4%	

Source: Health/Vital Statistics

TABLE E

CHANGES BY AGE GROUPINGS OF JUVENILES

Population Breakdown			1970		1979	
5-9	(5 years)		9,018	44%	12,979	43%
10-14	(5 years)		7,891	38%	11,356	37%
15-17	(3 years)	(1)	3,788	18%	6,163	20%
			20,607	100%	30,498	100%

Source: Health/Vital Statistics

(1) Vital Statistics breaks age groups in five year increments. To calculate three year estimated total for the 15-17 age group 60% of the 15-19 group was used.

TABLE F [illegible] JUVENILES TAKEN INTO CUSTODY PER INCIDENT (UCR DEFINITIONS)

	FY'79		FY'80		FY'81	
Part I Crimes	567	[illegible]	717	(26%)	709	(1%)
Part II Crimes	703	[illegible]	627	(11%)	695	11%
Total	1,270	[illegible]	1,344	+6%	1,404	4%

This data includes juveniles dealt with informally by DPS and Youths referred to court for formal processing.

Source: Juvenile Bureaus of St. Croix and St. Thomas/St.John, DPS-Annual Reports. LEPC reinterpretation to coincide with adult records

III. Juvenile

- Two Youth Service Centers are soon to undergo construction to provide shelter care for youths involved in minor infractions of the law.

- A group home for boys has started operations on St. Thomas, eventhough the official opening is yet to take place.

- Funds have been awarded through the Law Enforcement Planning Commission for a group home for girls on St. Croix.

- The Territory's Juvenile Criminal Code has been completely rewritten in a most comprehensive fashion by the Law Enforcement Planning Commission, and submitted by the Governor to the Legislature for action.

- Funds in the amount of 3 million dollars have been requested by the Governor through the V.I. Delegate to Congress to construct two Juvenile Pretrial Detention/Diversion Centers.

- The V.I. Delegate to Congress has been requested to support the allocation of funds for the Juvenile Justice and Delinquency Prevention Program within the Department of Justice at the 1982 funding level. A request has also been made concerning the 5% set aside of special emphasis funds under the JJDP Act for use by the Territories, such that the allocation of funds would go to the Territory or Territories who have the highest juvenile crime rate. At present, set aside funds are divided on a juvenile population basis. This results in the Virgin Islands receiving far less than it should receive based upon its actual juvenile crime problem.

- The Law Enforcement Planning Commission should soon receive funds through the Office of Juvenile Justice and Delinquency Prevention to implement a "Youth Restitution Project" to be administered by the Youth Services Administration. This project will provide work placement and training as an alternative to incarceration for youths found to be suitable for diversion from the Juvenile Justice System.

- The Government of the Virgin Islands is participating in a new joint public/private sector initiative to implement a youth multi-service center to provide pre-employment skills training, as well as alternative education to school drop outs on St. Thomas. Due to the shortage of funds at the local level, applications have been submitted to several foundations, with a local fund raising committee now being established. Federal funding in the amount of $200,000 would be most welcome from whatever source. This would underwrite the first year's cost of operation.

Addendum

LEPC has investigated avenues of funding and resources for implementing off-shore patrol operations. Results of this effort, at the request of Mr. Calvin Wheatley and Acting Attorney General Donald Bouton, are as follows:

1. The U.S. Customs Service is removing its shore patrol operation from the Territory in the near future. This appears to be the result of inactivity by the patrol operation. The boat provided to the Customs Patrol Unit was inoperable most of the time according to Customs officials. In addition, the U.S. Virgin Islands operates under Law Number 64 which is a carry-over from the Danish times. It is contained in the treaty with Denmark under which terms the U.S. Virgin Islands were purchased. Thus, there has existed much ambiguity as to the enforcement of Customs laws and regulations in the Territory.

2. Customs officers do not carry weapons. Their function, however, includes jurisdiction at the airports and on-board ships for purposes of search and seizure. At times, they have called in the Coast Guard to assist in providing searchs on board boats. This, whoever, is not a good arrangement on a standard operating basis.

3. Boats are routinely checked by Customs in the afternoon before departure. A boat may actually leave early the next morning, providing ample opportunity for the loading of contraband after the official Customs check has been made.

It would appear that three types of activity are called for prior to the implementation of any measures to improve off-shore patrol:

1. A complete review of all frederal and local laws relating to smuggling, drug trafficking, etc., needs to be undertaken to identify who has what jurisdiction in and around the Virgin Islands waters. The Delegate to Congress might be able to do this through the Congressional Research Service. There's really no sense in trying to improve enforcement until such time as we know what laws we are actually trying to enforce, and if--in fact--they are enforcible

2. A study should be undertaken to determine what the cost of any patrol operation might be. Quite obviously, this will be a very expensive operation.

3. Based on the findings of the foregoing, a determination should be be made as to whether this type of operation should be conducted at the local level or the federal level. Whoever might eventually perform such a function will surely find that it requires precise managerial skills for effective operations.

A second issue relates to area grid maps. These have been discussed for years. That they are needed for Police, Fire, Civil Defence, Emergency Medical Services, Law Enforcement Planning, the Office of Planning, Water and Power, Public Works, etc., is beyond question.

The V.I. Planning Office has been working on thes maps, but is hampered by a need to address other, more pressing priorities. Roy Adams, Director of the V.I. Planning Office, states that two map makers could complete the job in about eight months (one set of maps for each island) if the needed inter-agency cooperation, as well as needed funds were able to be secured.

To this end, LEPC will be calling a meeting of the principals cited above, at which time efforts will be made to establish a standing task force to address the issue in a cooperative manner. This will probably result in a reduction of the problem to a matter of funds. Each agency may be able to identify some resources to address the task at hand. What would really move the project forward would be the provision of federal assistance either in the form of funding (@ $70,000) or technical assistance on loan to the Territory to do the research and drafting work. If this were to be provided, this project could be completed within a time span of eight months to one year from now.

Best Avail

THE VIRGIN ISLANDS OF THE UNITED STATES
OFFICE OF THE GOVERNOR
CHARLOTTE AMALIE, ST. THOMAS 00801

February 18, 1982

Honorable Ron deLugo
Virgin Islands Delegate
to Congress
Rayburn Office Building 2443
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman deLugo:

It has come to my attention that President Reagan has decided to request no appropriation for the Office of Juvenile Justice and Delinquency Prevention for FY-83. You will recall that we faced this very same problem for FY-82. Due to extensive support for the JJDP Act of 1974, as amended, Congress restored some seventy million dollars to the FY-82 budget.

I am asking that you utilize your considerable resources to advocate that the Juvenile Justice and Delinquency Prevention Act of 1974, as further amended by Public Law 96-509 of the 96th Congress to extend the authorization of appropriations for such Act, be funded at no less than the FY-82 appropriation level of seventy million dollars for FY-83.

In addition, I call your attention to Sec. 12. (a)(5)(e) of Public Law 96-509, as herein attached. According to this section, the Territories are entitled to at least 5 percent of the funds available for grants and contracts made pursuant to the section. The amendment which provided for the 5 percent set aside was introduced by former Delegate to Congress, Dr. Melvin H. Evans, on November 19, 1980. I refer you to the Congressional Record for the Second Session of the 96th Congress, Vol. 126, Wednesday, November 19, 1980, No. 162, H10930. The argument for establishing the set aside was based upon the juvenile crime situation in the U.S. Virgin Islands. All Territories, however, were included in the 5 percent set aside provision. Subsequently, the Office of Juvenile Justice and Delinquency Prevention developed a formula which divided the 5 percent funds on a population basis, not on a needs basis as as the original intent of the Evans Amendment articulated.

I respectfully request, therefore, that you not only support the continuation of Public Law 95-509, but that you offer an amendment to Sec. 12.(a)(5)(e) to read as follows:

> "(e) At least 5 percent of the funds available for grants and contracts made pursuant to this section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. The allocation of the 5 percent funds among the Territories and the Commonwealth of the Northern Mariana Islands shall be on a demonstrated needs basis as determined by the number of Part 1 and Part 2 crimes for which juvenile apprehensions were made during the most recent fiscal year for which said apprehensions were officially reported. Uniform Crime Reporting categories shall be used as the basis for categorization of Part 1 and Part 2 crimes."

This proposed amendment will insure that the Virgin Islands gets its equitable share of the 5 percent set aside funds based on our needs, as opposed to juvenile population statistics which is now the case.

Please note that this proposed amendment does not increase the amount of the allocation. Furthermore, it does not require that each jurisdiction actually have Uniform Crime Reporting in place. To the contrary, it simply states that Uniform Crime Reporting categories shall be used as the basis for determining what would be Part 1 and Part 2 crimes according to UCR definitions.

In closing, I ask that you please keep me informed as to developments relative to the continuation of the Juvenile Justice and Delinquency Prevention Act, and as to appropriate steps to be taken to insure that the Office of Juvenile Justice and Delinquency Prevention is not terminated.

Your usual kind and prompt attention to this matter will be greatly appreciated.

Sincerely yours,

JUAN LUIS
Governor

cc: Glenn R. Tobey

(5) by striking out "to programs in nonparticipating States under section 224(a)(2) and";

(6) by striking out "substantial or"; and

(7) by striking out "subsection (a)(12)(A) requirement" and all that follows through "subsection (c)" and inserting in lieu thereof "requirements under subsection (a)(12)(A) and subsection (a)(13)".

SPECIAL EMPHASIS PREVENTION AND TREATMENT PROGRAMS

SEC. 12. (a) Section 224(a)(5) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5634(a)(5)) is amended to ead as follows:

"(5) develop statewide programs through the use of subsidies or other financial incentives designed to—

"(A) remove juveniles from jails and lockups for adults;

"(B) replicate juvenile programs designated as exemplary by the National Institute of Justice; or

"(C) establish and adopt, based upon recommendations of the Advisory Committee, standards for the improvement of juvenile justice within the State;".

(b) Section 224(a)(11) of the Juvenile Justice and Delinquency revention Act of 1974 (42 U.S.C. 5634(a)(11)) is amended by inserting fore the period at the end thereof the following: ", including on-the-ob training programs to assist law enforcement personnel and uvenile justice personnel to more effectively recognize and provide or learning disabled and other handicapped juveniles".

(c) Section 224(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5634(a)) is amended—

(1) in paragraph (10) thereof, by striking out "and" at the end thereof;

(2) in paragraph (11) thereof, by striking out the period at the end thereof and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(12) develop and implement special emphasis prevention and treatment programs relating to juveniles who commit serious crimes.".

(d) Section 224 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5634) is amended by adding at the end thereof he following new subsections:

"(d) Assistance provided pursuant to this section shall be available n an equitable basis to deal with disadvantaged youth, including emales, minority youth, and mentally retarded and emotionally or hysically handicapped youth.

"(e) At least 5 percent of the funds available for grants and ontracts made pursuant to this section shall be available for grants nd contracts designed to address the special needs and problems of uvenile delinquency in the Virgin Islands, Guam, American Samoa, he Trust Territory of the Pacific Islands, and the Commonwealth of he Northern Mariana Islands.". Grants and contracts.

USE OF FUNDS

SEC. 13. (a) Section 227 of the Juvenile Justice and Delinquency revention Act of 1974 (42 U.S.C. 5637) is amended by adding at the nd thereof the following new subsection:

"(c) Funds paid pursuant to section 223(a)(10)(D) and section 24(a)(7) to any public or private agency, organization, or institution 42 USC 5633. 42 USC 5634.

EXHIBIT B

STATEMENT OF
HONORABLE JUAN LUIS, GOVERNOR
UNITED STATES VIRGIN ISLANDS
BEFORE THE
SUBCOMMITTEE ON INSULAR AFFAIRS
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Mr. Chairman, distinguished members of this subcommittee, it is always a pleasure to appear before you to comment on proposed bills which would affect the Virgin Islands and I thank you for the opportunity to do so again this morning.

First I would like to comment on H.R. 6859, an important reform measure which had its roots in the fourth proposed Constitution of the Virgin Islands. Last fall, Senator Lowell Weicker introduced S.1674 which was originally intended to make the necessary alterations in the Revised Organic Act to accomodate the Constitution. When the proposed Constitution failed to be approved by the voters, the bill was reexamined and Senator Weicker requested that it be redrafted with input from the administration and the territories, with a view toward making some progressive changes in line with the philosophy of increased autonomy for the Territories.

Through my office, and through the Honorable Henry Feuerzeig, Judge of the Territorial Court, among others, the views of the Virgin Islands on this measure have several times been presented to Congress and the Administration. In this most recent draft, H.R. 6859, Congressman deLugo has now incorporated nearly all the improvements we have suggested over the course of the last year. I commend him and Senator Weicker for their efforts and I urge this committee's support of the bill.

If passed by Congress, this bill would be a recognition of the desire of the people of the Virgin Islands to continue to move in the direction of increased autonomy and self-determination. Most important, the bill provides us with authority to establish a truly local court system on both the trial and appellate levels rather than continuing to rely on the federal district court for determining many local matters. Also, 15 years after establishment of a local Appellate Court, appeals to the U.S. Court of Appeals for the Third Circuit of purely local matters would be eliminated by this bill. While I believe that a transitional period may be helpful in order to give our local appellate court a chance to establish itself, I feel that 15 years is longer than the Virgin Islands needs. I realize that a 15 year period has precedent in the Northern Mariana Islands, but the Virgin Islands has been a part of the United States longer than any other Territory, except Puerto Rico, and therefore, a shorter period, perhaps five years, would seem more appropriate in our case.

Other sections of this bill also deserve brief comment. In regard to the proposal to permit use of the grand jury system in the Virgin Islands federal courts, I feel that the Committee should primarily be guided by the comments of our District Court judges and U. S. Attorney as to whether this system is desirable or necessary.

I support the proposal to eliminate language from the

Revised Organic Act which permits Congress to annul acts of the local legislature. The U.S. Constitution's supremacy clause adequately covers this issue in my view.

I also support the other progressive changes provided in this bill including those which eliminate the loyalty oath requirements for Government employees, extend the term of district court judges to ten years, and permit the recall of elected officials. With regard to the last of these, however, I believe that the requirement of a two-thirds vote of qualified voters is unnecessarily difficult to meet. I would prefer the language of the proposed fourth Constitution which only requires two-thirds of those actually casting ballots, coupled with the requirement of a petition of at least 30% of eligible voters to place the issue on the ballot.

Finally, I also generally endorse the sections of the bill which repeal obsolete provisions of the Organic Act. However, I would ask that two changes be made. First, one additional provision, Section 4 of the Act of March 3, 1917, should also be repealed. It is the Government's belief that this provision was in fact repealed by implication because it was not reenacted in the 1936 Organic Act. Repealing it at this time, while simultaneously noting its obsolescence, would therefore be an appropriate means of confirming Congress' desire that Section 4 was not intended to be effective with regard to tax laws enacted after 1936. This Congressional intent was most recently expressed in 1980 in

Section 405 of Public Law 96-205 which authorized the Virgin Islands Legislature to enact an up-front excise tax collection system. Repealing Section 4 would be helpful in that it would eliminate a seemingly inconsistent, though obsolete, reference to the Virgin Islands excise tax in the federal statutes.

Second, I have doubts as to whether Section 18 of the 1936 Act and Section 2 of the 1917 Act were actually replaced by Section 8(c) of the 1954 Act, and I would therefore ask that these provisions not be repealed at this time.

Now I would like to move to H.R. 6680, a bill that would significantly alter the role of the U.S. government comptrollers in the Territories. Last December, in response to a request that I comment on a report by the Comptroller General entitled, "The Federal Audit Function in the Territories Should be Strengthened", I stated that any proposal to shift audit responsibilities to the local government should only be adopted if it includes a technical assistance plan and funds for the retraining of the staffs of the Internal Audit Division, and the Accounting Division of the V.I. Department of Finance. I also stated that I support the recommendations of the report concerning improvement of the federal audit function, shifting the Comptroller's Office to the Office of Inspector General, and shifting the responsibility for auditing of non-federal programs to the local government, provided that the technical assistance plan and funding is also provided.

It appears that H.R. 6680 would implement all of the recommendations in the Comptroller General's report except the most important one, that is the provision of technical assistance to the Territories so that they may capably assume greater responsibilities for the auditing and reporting functions. I applaud you, Mr. Chairman, for introducing this bill, but I would ask that approval be delayed until funds are authorized and appropriated for technical assistance and a technical assistance plan is developed. Otherwise I do not believe that the other worthy objectives of the Comptroller General's Report can be achieved. I do understand, however, that technical assistance funding is now being pursued in the appropriate committees of both the House and Senate.

I would request that the bill be amended however to conform with my firm belief that the proposed shift in the role of the government comptroller and the proposed increase in the responsibilities of the local government for the auditing function should also provide that the U.S. government comptroller's responsibility extend to auditing the use of federal funds only, and that the audit function for local funds should be the sole responsibility of the local government. This change is consistent with increased territorial autonomy and with the revised role of the federal comptroller embodied in this measure. I would note that local legislation has been enacted to establish a local auditor general whose role would be to audit the expenditure of local funds.

I support the other two bills before the committee today, H.R. 5688 which would establish a Commission to study the application of federal laws to the Territories, and H.R. 6780 which would require that an annual report on the state of the insular areas be prepared by the President and submitted to Congress. Mr. Chairman, I appreciate the effort that your committee and the Territorial Caucus has expended in trying to ensure that the interests of the Territories are adequately protected in the federal decision-making process. Both of these bills are excellent steps in that direction. H.R. 5688 is designed to accomplish a thorough review of existing laws to determine what changes are needed to help the people of the Territories achieve a more equal treatment under federal programs and enactments. Similarly, H.R. 6780 would help provide information to Congress as to what measures are needed to help the Territories in the future.

I understand that today the Committee is also considering proposals similar to those contained in S.2250, a bill to amend the 1974 Disaster Relief Act. In this regard, I would concur with and support Delegate deLugo's recent efforts, and the efforts of the Territorial Caucus, to have this bill strengthened as it relates to the Territories. One means of improving the measure would be to permit federal relief efforts to be used to improve, as well as restore, property damaged in a storm. This would be consistent with other federal efforts to improve Territorial infrastructure and would be more cost-effective in the long run by protecting against possible future damage before it happens. Also due to the different fiscal relationship between the federal government and the territories, as compared to its relationship with the states, I also support the suggestion that cost sharing requirements for repair of basic facilities be waived.

Again, Mr.Chairman, I wish to thank you and the members of your committee for sponsoring, cosponsoring, and supporting all four of the bills under consideration today, and for giving me the opportunity to share my views with you.

The CHAIRMAN. Thank you very much, Governor. I appreciate your statement, and the attached materials will, of course, be in the record.

Mr. de Lugo, you made no reference in your statement to the provisions of S. 2090.

Do you support the provisions that would give the governor the authority to exempt provisions of the Clean Air Act?

Mr. DE LUGO. Yes, I do.

The CHAIRMAN. A question has been raised with respect to section 103 of 2729, that the grant of exclusive jurisdiction over tax matters to the district court would not be efficient since the administration of tax matters is done locally, and the attorney general would not be able to prosecute cases without the consent of the U. S. attorney.

Assuming that this issue can be resolved, would you have sufficient court access to enforce the tax laws?

Governor LUIS. If we can have the local attorney general prosecute these cases in the district court, we will have.

The CHAIRMAN. H.R. 6859 was modeled on the drafting service which was introduced as S. 2729. H.R. 6859 has a recall provision different from that which the Senate and House agreed to for Guam under H.R. 5139.

The Department favors such a recall provision following the Guam example. Would you comment on the reason for the difference in treatment and do you object to the Guam provision, first Mr. de Lugo?

Mr. DE LUGO. I would prefer to reply to that for the record, Mr. Chairman.

The CHAIRMAN. Very well; your reply will be made a part of the record when received.

Governor LUIS. I have already indicated that I have no objection to the manner in which it would be resolved.

The CHAIRMAN. Mr. de Lugo, do you have a position on whether the annual financial report required under S. 2633, the comptroller bill, should be certified independently or by the Inspector General?

Mr. DE LUGO. I favor the Inspector General.

The CHAIRMAN. Do you feel that an annual report on the state of the territories would be useful, and if so, do the provisions of section 103 of S. 2888 adequately cover the areas you would want information on? Governor?

Governor LUIS. I do believe that such a report would be useful.

The CHAIRMAN. And does the section 103 adequately cover the subject matter?

Governor LUIS. I would prefer to respond to that later.

The CHAIRMAN. If you will do so; Mr. de Lugo?

Mr. DE LUGO. I feel that it does, but Mr. Chairman, on this matter, I would hope that as you know, we originally had it included in the House bill as the bill went to the floor.

It was removed, and I would request that if the—I strongly support this, but I would request that if the committee in its wisdom also supports it, that it be done as a separate piece of legislation because it is getting so late. I am hopeful that the bill that will come out of your committee could reflect the amendments that were passed on the House side, so we can get in under the wire.

The CHAIRMAN. I understand that. I don't know how much time we have left. I keep reading newspaper reports saying we will be out of here October the 2nd. I have read those reports before. I don't believe it, but I would like to.

I have heard the testimony, Governor, that was given before the Appropriations Committee, of course, with respect to the need for the water and power $40 million request and the $3 million for the detention facility.

How much do you anticipate the Virgin Islands needs in fiscal year 1983 and what would happen if the funds were not available until 1984 or later?

Governor LUIS. We would need $10 million.

The CHAIRMAN. $10 million in 1983?

Governor LUIS. $10 million in 1983.

The CHAIRMAN. That is for water and power. How about for the detention facility? Is that included in that?

Governor LUIS. We would need $3 million in addition to the $10 million.

The CHAIRMAN. The full amount for the detention facility in 1983?

Governor LUIS. That is correct, sir.

The CHAIRMAN. But the $40 million could be spread over——

Governor Luis. A 4-year period.

The CHAIRMAN. Four years? What would happen if these funds were not available until later?

Governor LUIS. It would create serious problems for us, sir. At present I have introduced in the local legislature other measures because the problem is beyond, the problem is more severe than what is being presented here in the request for $40 million to bring the capital improvements to the water and power authority.

The problem is more complex because the water and power authority have severe financial difficulties, and locally I have some other measures before the legislature to deal with that problem, so I would feel that if the money is not forthcoming in 1983 we can experience serious problems with the operation of the water and power authority as far as the generation of power electricity.

Mr. DE LUGO. May I comment on that, Mr. Chairman? The Virgin Islands government has made tremendous strides in the water area, as the Governor pointed out in his testimony. You know, not so long ago we had constant breakdowns, and there was not enough water to go around. Well, that has been overcome, and the government is now providing reliable water to the people, but the power situation is still critical. We still have the outages, and you can imagine from a place that depends on tourism, it is tough enough on us to live there, but also if you are trying to attract the tourist industry, and we are the largest in the Caribbean, they don't tolerate these outages, so we would simply be, it would just continue that way with more outages.

In the matter of the detention center, I think that crime is a very high priority, very serious problem, and the youthful offender has been identified as a real component to this problem. We simply have got to build these detention centers or the problem will continue.

Governor **Luis**. Another point, Mr. Chairman, we are making a tremendous effort to attract industries to the Virgin Islands, and in order to do so, we have no choice but to improve our power system to the maximum.

The **Chairman**. Governor, you indicate that the Virgin Islands has already provided over $40 million for water and power in the last few years.

Are these funds mainly attributable to the desalination facilities?

Governor **Luis**. To the desalination facilities and also the purchase of backup electric power generators which have helped ease the power outages problem.

The **Chairman**. How much of the money was put into the desalination facility?

Governor **Luis**. I recall some $15.1 million, and $9.5 million for small desalination plants that will be added to those large ones.

The **Chairman**. What is the current financial condition of WAPA?

Governor **Luis**. The executive director of the water and power authority is here. I think he will be the appropriate person to answer that question.

Mr. **de Lugo**. We brought him along just for that question.

The **Chairman**. We welcome his testimony.

Mr. **Blake**. I am Thomas Blake, the executive director of the Virgin Islands Water and Power Authority.

In response to your question, Senator McClure, at the present time our projected revenues for the electric system for the fiscal year in which we are presently and which will end June 30, 1983, we project revenues of about, from the electric sales, roughly about $55 million.

The first month of this year we have had revenues of about slightly over $4 million. Now as the Governor will explain, Governor Luis is trying to explain, the system is inextricably interwoven. While on the one hand we have new water plants in the system, these water plants rely on steam extracted from the steam turbines.

To the extent that we can continue the overall program that we started with the Virgin Islands government funds, the moneys which have been granted for the new plants will be ineffective if we can't provide extraction steam to those units, so that effectively we will be back where we were several years ago.

The authority itself cannot generate enough revenues on its own. At the present time, customers of the utility are paying approximately 14 cents a kilowatt hour, and to attempt to increase that per kilowatt hour would certainly put a further burden on the people of the Virgin Islands, let alone attempt to encourage any additional industry.

The **Chairman**. What do you propose? You indicated that there are projected revenues of $55 million. What are your projected costs of operation?

Mr. **Blake**. The combined operation that is, revenues from electric sales—we have a maintenance surcharge which will remain in effect until January 1983 which will amount to roughly $5 million, to make it $60 million. We anticipate, we have a petition before the Public Service Commission to continue that in effect.

Our projected operating costs, including these overhauls, are going to run us in excess of about $67 million. To be quite honest with you, Senator McClure, if the moneys which the Virgin Islands government is requesting from the U.S. Government are not in place in this fiscal year, the Virgin Islands government water authority will on the one hand not be able to accomplish the work. Its deficit posture will be even worse than it is now.

The CHAIRMAN. You have indicated that there is a $7 million shortfall.

Does that include any kind of a sinking fund for capital replacement?

Mr. BLAKE. Not for capital replacement per se, but for acquisition of capital items which are necessary, particularly in the area of service of the Island of St. John, 4 miles across the water.

If the measures which the government now has before the Virgin Islands Legislature are adopted, we would then be in a position to do exactly what you suggest because we would not have that as a problem to deal with.

The CHAIRMAN. If I understand you correctly, there are some capital improvements which are required now which will be included in the $67 million, but that does not include any sinking funds for replacement of the equipment or material?

Mr. BLAKE. That is correct, Senator.

The CHAIRMAN. So there would be a future operating deficit greater than the $7 million which you now program?

Mr. BLAKE. Over the next——

The CHAIRMAN. Several years, if we include the depreciation of plant and equipment; do you have any actions which are proposed to cover that future cost?

Mr. BLAKE. We have, as I said, we have the request, the petition, before the Public Service Commission to allow this to occur. Up until now, the Public Service Commission has deferred action on that request. We will not go to hearings until January 1983, which that will be passed in the authority's fiscal year.

The CHAIRMAN. You suggested that you have got a $5 million surcharge which is pending.

Is there a further charge pending before the Public Service Commission?

Mr. BLAKE. No. The $5 million surcharge was meant to be in lieu of the petition, and it is strictly earmarked for maintenance.

The CHAIRMAN. Is it your feeling, Governor, that given the economy of the Virgin Islands, with the levels of the disposable income at the lower income brackets, some subsidy is going to continue to be required?

Governor LUIS. For the Virgin Islands? Yes, sir.

The CHAIRMAN. So you think it will require subsidy for some time to come?

Governor LUIS. I have attorney Bill Blum who prepared the legislation that is before the legislature, and I would ask him to briefly explain what is in the legislation to answer your question, sir.

Mr. BLUM. Willie Blum, counsel to the Governor—in April, Governor Luis sent to the Virgin Islands Legislature a piece of legislation which would help Wappa. It would authorize an appropriation of $1 million per year for the next 5 fiscal years, basically as a direct subsidy of Wappa.

It would also assume, the government would assume the existing obligations of Wappa to pay back $8.5 million in bond anticipation which would relieve Wappa of approximately an additional $1 million of existing obligations.

The CHAIRMAN. Are hotels and major businesses paying their full share of the cost of water and power?

Mr. BLAKE. Yes, sir.

The CHAIRMAN. You are satisfied there is no problem in the distribution of those rates?

Mr. BLAKE. No. Our receivables, current accounts, we are collecting about roughly 94 percent on electricity. On the water, the authority's only customer for water is the Virgin Islands government which then distributes it to the water users.

The CHAIRMAN. Senator Johnston?

Senator JOHNSTON. Thank you, Mr. Chairman, and I would like to welcome Ron de Lugo and Gov. Juan Luis to the committee. These are our good friends who are talking about some family problems, Mr. Chairman. The U.S. Virgin Islands is just that, a territory of the United States, whose citizens are citizens of the United States. It seems to me that at a time when we are getting ready to spend, over a 2-year period, some billion dollars on the Caribbean Basin Initiative, that we ought to at least provide what I regard as a basic infrastructure for the Virgin Islands.

I think this $40 million is very badly needed for electricity and water in the Virgin Islands. The Virgin Islands have great advantages over other islands in the Caribbean. They are under the American flag. People want to come there. Salaries are higher, there is a better standard of living and other benefits. Yet for the tourists there are higher costs in the Virgin Islands than there are in other competing islands in the Caribbean, and there are a great many islands down there for tourists.

Look at the difference which you have to pay a hotel worker in the Virgin Islands as opposed to a hotel worker other islands? It is much more, and consequently, if we are going to keep a competitive advantage and continue to attract not only tourists but industry to the Virgin Islands, we have to have a decent infrastructure of which power and water are absolutely top.

Is your water there pumped electrically or is it gravity flow?

Mr. BLAKE. The distribution system, some of it is pumped and some is gravity.

Senator JOHNSTON. The reason I asked is because it seems when I have been there that every time you have an electricity outage you also have a water outage.

Mr. BLAKE. That is correct.

Senator JOHNSTON. So in order to get the water in good shape, and you have begun to take those first steps, it doesn't help as far as outages are concerned? When you have the electric outage, you are out of water as well?

Mr. BLAKE. That is correct.

Senator JOHNSTON. With only, what, 100,000 people in the U.S. Virgin Islands, to try to come up with $40 million I think is really pretty unrealistic. I haven't analyzed your tariffs which you charge either individuals or hotels or businesses, but I know that you are not going to be able to get $40 million from 100,000 people in any quick turnaround time, in time to save that water and power system, so, Mr. Chairman, I hope we can fund that item as well as the juvenile detention center.

As the Governor pointed out, over 50 percent of the crime in the Virgin Islands is by juveniles. There is a rather flippant attitude on the part of juveniles there toward the justice system because they know there is no place to put them. They can commit any crimes they wish and they know that you just can't put them anywhere. We badly need this facility.

Now I do want to disagree with the Governor on one item, and that is with respect to exclusive jurisdiction of the district court over all civil and criminal cases regarding income tax.

It seems to me that there is one thing that the Federal Government does well, and that is to collect taxes. After all, the district court there is not an alien court. It is staffed by judges who are from the Virgin Islands. Isn't that correct? And the U.S. attorney is from the Virgin Islands.

Mr. DE LUGO. We hope to get a U.S. attorney. At the present time we don't have one. I'm sorry, Senator.

Senator JOHNSTON. Yes. All right. Well, anyway, if you get one, he ought to be from the Virgin Islands, and while it is a local tax in some respects, to the extent it is not collected you come here to get the balance, whether it is for water and electricity or whether it is for detention centers, so it is very much a Federal tax and a Federal concern, and I don't see any reason why it shouldn't be handled by the U.S. district court.

The fact of the matter is the U.S. district court is probably in most States, it is probably more strict. It is more feared, and consequently tax collections are better than they are on the State level, and I would suspect that same thing would be true with respect to the Virgin Islands, so I would hope that we would go along with that advice of the administration.

Thank you, Mr. Chairman.

Governor LUIS. Senator, may I comment?

Senator JOHNSTON. Certainly.

Governor LUIS. At the present time, the cases are handled in both courts, the district and the other court, and of recent we have established a new Bureau of Internal Revenue, and the record shows that collection of income taxes have increased significantly because of this.

In addition, we are saying, because we recognize the caseload and the pressure on the district court, we are saying that we permit the system to remain the same way, but with the attorney general to prosecute these cases in the district court because then it would help assist them to do more cases.

Senator JOHNSTON. He has that authority now only by leave of the U.S. attorney; is that correct?

Governor LUIS. That is correct.

Senator JOHNSTON. What's wrong with keeping that?

Governor LUIS. Because the U.S. attorney doesn't give him the authority.

Senator JOHNSTON. Why does he not give him the authority?

Governor Luis. I don't know the answer to that question, Senator.

Senator Johnston. Well, I think I will find out the answer to that.

Governor Luis. We have a very capable attorney general in the Virgin Islands now who I know would go to court with anyone.

Senator Johnston. We will ask the Department of Justice about that. As long as you have a very capable man, I think he ought to be given a very free hand to go after the offenders.

Governor Luis. It's a woman, sir.

Senator Johnston. That's all my questions, Mr. Chairperson. I said "chairperson."

The Chairman. Thank you, Senator Johnston, and thank you for your testimony this morning. We hope it will be helpful.

Governor Luis. Thank you very much. I would like to close by extending a cordial invitation to both of you because we recognize the tremendous help that you give the Virgin Islands in helping us to establish a modern, clear system in the Virgin Islands, and in the month of October we will be dedicating a modern hospital facility in the territory, and we very much are appreciative of the help that you have given us in the past, and I want to extend to you an invitation—as a matter of fact, there is an invitation in the mail—to both of you, to attend these dedications.

The Chairman. Thank you very much.

Mr. de Lugo. Mr. Chairman, may I say in closing that invitation for October is a tough one for a Member of Congress to accept outside of his or her district, but I feel that we do need to do more on the court bill. I think that we need, at least it is the feeling on the House side that we need more local input on the court bill.

The Governor has some reservations with provisions in S. 2729 as was clear here, and it might serve a real purpose if you could come down to the Virgin Islands and perhaps get some input on that, hold hearings on it down in the Virgin Islands. We may do that on the House side, and that would be, I would say a good time for that would be about January.

The Chairman. I thought maybe you meant hearings in the Virgin Islands would be good in October.

Mr. de Lugo. I hope you will take us up on that.

The Chairman. Thank you very much. The next witness is the Honorable Fofo Sunia. Welcome to the committee once again. We look forward to your testimony again. I invite you to summarize.

STATEMENT OF HON. FOFO I. F. SUNIA, DELEGATE FROM AMERICAN SAMOA

Mr. Sunia. Thank you, Mr. Chairman. I have a very brief statement, and I would like to touch on three subjects, and before I do so, may I say that I join my colleagues in their sentiments and in their compliments to yourself and members of the committee for your continuing attention to the problems of the territories.

Since we do not have representation in the Senate, it is a comfort to know that those like yourselves who are conscientious are aware of our particular difficulties.

The **Chairman**. Thank you very much for that. I do appreciate that, and I think we do have a particular responsibility because of the very fact that you mentioned.

Mr. **Sunia**. Thank you. On S. 2632 I have introduced an identical bill in the House of Representatives, and I urge passage of this information. The purpose and indeed the hopes of this bill are the same as those of similar legislation previously passed for other territories. By its passage we hope to give the commercial institutions interested in establishing or further developing existing operations in the territory a means by which to attract new capital. The territory needs this. Without resources of its own and with little to offer to prospective commercial interests, the passage of this bill into law will certainly make American Samoa attractive to outside investment.

Let me make one point clear, Mr. Chairman and distinguished members of this committee. This industrial bonding mechanism is intended only to attract new outside capital to aid the economic development of the territory. It is not our purpose to use this avenue to replace the traditional government responsibilities in the areas of power generation, water systems development, highway construction, and other parts of developing a permanent and reliable infrastructure.

I am positive that any effort to use revenue bonds to finance these basic services will seriously delay the proper development of those services, negating efforts to make the territory attractive to investors.

On S. 2090, while this measure specifically relates to the Northern Marianas, let me say that our problems in this area are in many ways identical to those of the Marianas. If you are prepared to permit waivers for the Marianas, I believe it is time to consider the case of other territories or insular areas, and grant them all similar waiver conditions at the same time.

In the House we were successful in pushing an amendment to grant waivers to American Samoa during the recent discussion by the Energy and Commerce Committee of H.R. 5252. I know the other territories have also worked on the same problem, using other avenues. I believe it is best for all concerned if the subject is dealt with in one piece of legislation, covering all insular areas. I am sure that would simplify matters for the agency as well.

As far as regulations to permit importation of more economic vehicles, I want to make sure we do not excuse the companies from installation of scrubbers.

On S. 2088, Mr. Chairman, I was not asked to comment on the matter of citizenship for the people of the Northern Marianas, but if I may, I would like to briefly say that our brethren in the Marianas do deserve the recognition as citizens of our Nation. At a time when all others in the area seem uncertain and appear to want to bargain before they would make that decision, the people of the Northern Marianas chose outright, without reservations, to become members of this great country of ours.

Their decisiveness in the matter stands clearly as the best answer so far, the only concrete achievement in the years of negotiations out there. Their faith and confidence in Americanism cannot be questioned, and on their own, they have chosen to be part of this great country where freedom is a practice and not just a word. My congratulations to the people of the Northern Marianas, and particularly to Mr. Pangelinan who represents them here.

I cannot help but reflect upon the present status of my own people, Mr. Chairman, and hope that those who fear the loss of culture and tradition if we became full U.S. citizens would soon listen to President Roosevelt crying against the fear of fear. I hope that they will soon come to realize that no amount of legal arguments, regardless of how brilliant they may be, and no degree of love for tradition, regardless of how valid those may be, can come close to the value of the most precious possession in the world today—U.S. citizenship.

I hope, Mr. Chairman, that when the time comes your committee will look with favor on our request for citizen status. Now, I believe it has come time for invitations. May I remind you of the invitations of Governor Coleman to attend the South Pacific Conference in the territories next month.

This is not just another conference, Mr. Chairman. There will be about twenty different island governments and territories that will be represented, and I am sure you are aware of the feelings out there toward us particularly with regard to the Law of the Sea participation of this particular Nation, and for a variety of other reasons, I believe it would be very important for the committee to be represented so you can sort of monitor and gauge the feelings in that part of the world where we are.

Finally, I hope that while it is not a subject matter of this particular hearing, I hope that somewhere along the line you will be reminded once again of our concerns over the Caribbean initiative package, particularly with our efforts to seek the exclusion of tuna from free tariff status.

With those brief comments, Mr. Chairman, I wish to conclude. Thank you very much for the opportunity.

[The prepared statement of Mr. Sunia follows:]

STATEMENT OF CONGRESSMAN FOFO I.F. SUNIA

BEFORE

THE ENERGY AND NATURAL RESOURCES COMMITTEE

MR. CHAIRMAN:

IT IS A PLEASURE ONCE AGAIN TO APPEAR BEFORE YOU AND TO GIVE TESTIMONY ON ITEMS AFFECTING OUR TERRITORY THAT IS PRESENTLY BEFORE YOUR COMMITTEE. I APPRECIATE YOUR PERMITTING ME TO MAKE THESE BRIEF REMARKS THIS MORNING.

S. 2632 -- I HAVE INTRODUCED AN IDENTICAL BILL IN THE HOUSE OF REPRESENTATIVES. THE PURPOSE, AND INDEED THE HOPES, OF THIS BILL ARE THE SAME AS THOSE OF SIMILAR LEGISLATION PREVIOUSLY PASSED FOR OTHER TERRITORIES. BY ITS PASSAGE, WE HOPE TO GIVE THE COMMERCIAL INSTITUTIONS INTERESTED IN ESTABLISHING, OR FURTHER DEVELOPING EXISTING OPERATIONS IN THE TERRITORY, A MEANS BY WHICH TO ATTRACT NEW CAPITAL. THE TERRITORY NEEDS THIS. WITHOUT RESOURCES OF ITS OWN, AND WITH LITTLE TO OFFER TO PROSPECTIVE COMMERCIAL INTERESTS, THE PASSAGE OF THIS BILL INTO LAW WILL CERTAINLY MAKE AMERICAN SAMOA ATTRACTIVE TO OUTSIDE INVESTMENT.

LET ME MAKE ONE POINT CLEAR, MR. CHAIRMAN. THIS INDUSTRIAL BONDING MECHANISM IS INTENDED ONLY TO ATTRACT NEW OUTSIDE CAPITAL TO AID THE ECONOMIC DEVELOPMENT OF THE TERRITORY. IT IS NOT OUR PURPOSE TO USE THIS AVENUE TO REPLACE THE TRADITIONAL GOVERNMENT RESPONSIBILITIES IN THE AREAS OF POWER GENERATION, WATER SYSTEMS DEVELOPMENT, HIGHWAY CONSTRUCTION, AND OTHER PARTS OF DEVELOPING A PERMANENT AND RELIABLE INFRASTRUCTURE. I AM POSITIVE THAT ANY EFFORT TO USE REVENUE BONDS TO FINANCE THESE BASIC SERVICES WILL SERIOUSLY DELAY THE PROPER DEVELOPMENT OF THOSE SERVICES, NEGATING EFFORTS TO MAKE THE TERRITORY ATTRACTIVE TO INVESTORS.

S. 2090 -- WHILE THIS MEASURE SPECIFICALLY RELATE TO THE NORTHERN MARIANAS, LET ME SAY THAT OUR PROBLEMS IN THIS AREA ARE IN MANY WAYS IDENTICAL TO THOSE OF THE MARIANAS. IF YOU ARE PREPARED TO PERMIT WAIVERS FOR THE MARIANAS, I BELIEVE IT IS TIME TO CONSIDER THE CASE OF OTHER TERRITORIES (INSULAR AREAS) AND GRANT THEM ALL SIMILAR WAIVER CONDITIONS AT THE SAME TIME.

IN THE HOUSE, WE WERE SUCCESSFUL IN PUSHING AN AMENDMENT TO GRANT WAIVERS TO AMERICAN SAMOA DURING THE RECENT DISCUSSION BY THE ENERGY AND COMMERCE COMMITTEE OF H.R. 5252. I KNOW THE OTHER TERRITORIES HAVE ALSO WORKED ON THE SAME PROBLEM USING OTHER AVENUES. I BELIEVE IT IS BEST FOR ALL CONCERNED IF THE SUBJECT IS DEALT WITH IN ONE PIECE OF LEGISLATION, COVERING ALL INSULAR AREAS. I AM SURE THAT WOULD SIMPLIFY MATTERS FOR THE AGENCY AS WELL.

S. 2088 -- MR. CHAIRMAN, I WAS NOT ASKED TO COMMENT ON THE MATTER OF CITIZENSHIP FOR THE PEOPLE OF THE NORTHERN MARIANAS. BUT IF MAY, I WOULD LIKE TO BRIEFLY SAY THAT OUR BRETHREN IN THE MARIANAS DESERVE THE RECOGNITION AS CITIZENS OF OUR NATION. AT A TIME WHEN ALL THE OTHERS IN THE AREA SEEM UNCERTAIN AND APPEAR TO WANT TO BARGAIN BEFORE THEY WOULD MAKE THAT DECISION, THE PEOPLE OF NORTHERN MARIANAS CHOSE OUTRIGHT, WITHOUT RESERVATIONS, TO BECOME MEMBERS OF THIS GREAT COUNTRY OF OURS. THEIR DECISIVENESS IN THE MATTER STANDS CLEARLY AS THE BEST, AND SO FAR THE ONLY CONCRETE ACHIEVEMENT, IN THE YEARS OF NEGOTIATIONS OUT THERE. THEIR FAITH AND CONFIDENCE IN AMERICANISM CANNOT BE QUESTIONED, AND ON THEIR OWN, THEY HAVE CHOSEN TO BE PART OF THIS COUNTRY

WHERE FREEDOM IS A PRACTICE - AND NOT JUST A WORD. MY CONGRATULATIONS TO THE PEOPLE OF NORTHERN MARIANAS.

I CANNOT HELP BUT REFLECT UPON THE PRESENT STATUS OF MY OWN PEOPLE, MR. CHAIRMAN, AND HOPE THAT THOSE WHO FEAR THE LOSS OF CULTURE AND TRADITION IF WE BECOME FULL U.S. CITIZENS WOULD SOON LISTEN TO PRESIDENT ROOSEVELT CRYING AGAINST THE FEAR OF FEAR. I HOPE THAT THEY WILL SOON COME TO REALIZE THAT NO AMOUNT OF LEGAL ARGUMENTS, REGARDLESS OF HOW BRILLIANT THEY MAY BE, AND NO DEGREE OF "LOVE FOR TRADITION" - REGARDLESS OF HOW VALID THAT MAY BE, CAN COME CLOSE TO THE VALUE OF THE MOST PRECIOUS POSSESSION IN THE WORLD TODAY - U.S. CITIZENSHIP.

I HOPE MR. CHAIRMAN THAT WHEN THE TIME COMES, YOUR COMMITTEE WILL LOOK WITH FAVOR ON THIS MATTER.

THANK YOU, MR. CHAIRMAN.

The **Chairman**. Thank you very much for your testimony, and I appreciate the invitation. It is an important conference, and I think we need to recognize that.

I am not sure that I will be able to attend, but certainly we will be represented at that particular meeting. It may be that Senator Johnston and some, other member of the committee, will be able to be there at that time. I know Senator Weicker has great interest in it, but as you know, he has an election coming up in a few weeks. He necessarily is devoting most of his attention to that effort at this particular time and will be over the next several weeks.

The bill, S. 2632, dealing with the revenue bond was introduced at the request of the Governor. The Department supports the legislation, but has conditioned that upon an addition to the legislation which would require consent of the Samoa Fono to be obtained first, and the legislation is clarified to include interest on the bond to be repaid from the revenues.

Do you concur with the clarifying amendments?

Mr. **Sunia**. I have no problems with it, sir. I am sure Samoa awaits your lead in this particular Nation. It would be most happy to provide local legislation that would further this particular measure.

The **Chairman**. Do you have any problems with requirements in the comptroller transfer bill, S. 2633, that the Government of American Samoa prepare an annual financial report?

Mr. **Sunia**. I have no problems with that, sir. I would say as I did in the House testimony, it will mean a little bit additional cost, but these are necessary costs.

As a matter of fact, if I might say, that recently our government seemed to be prepared a little bit faster with the report. It is a little bit more prompt, but it wouldn't be too much of a problem.

The **Chairman**. Do you think that report should be independently certified or do you think that the Inspector General should do the certification?

Mr. **Sunia**. I think it should have some form of independent certification, sir.

The **Chairman**. Do you feel that there is a need or a beneficial aspect to a requirement that the President of the United States file an annual report on the state of the insular areas?

Mr. **Sunia**. I think it is very necessary. I am aware of the views against this, but as I said in the House, even if we get two or three sentences in the state of the Union message, that would be sufficient. I know how much time goes into preparing one single sentence in that message, but seeing that there is none, then perhaps there ought to be a separate message on the state of the territories.

The **Chairman**. Thank you very much. Senator Johnston?

Senator **Johnston**. Mr. Chairman, I also want to welcome Congressperson Sunia to the committee. It is good to have you back. Thank you for the invitation. That's a long way out there. I doubt if I will have time in October to go, but I want to get out there soon.

Your statement is eloquent, particularly about citizenship, and I hope we can comment on that.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much for your testimony. I appreciate your appearance here this morning, and again as always.

Mr. SUNIA. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is the Honorable Edward Pangelinan.

Your statement together with the supporting documents will be made a part of the record, and I invite you to summarize your statement for us.

Thank you very much.

STATEMENT OF HON. EDWARD DLG. PANGELINAN, WASHINGTON REPRESENTATIVE, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Mr. PANGELINAN. Thank you, Mr. Chairman. Because of the shortness of the hearing this morning I would like to have our rather lengthy testimony, some of it corrected, inserted in the record.

Governor Tom Tenora, the elected official of the Commonwealth, regrets he is unable to attend this hearing and authorized me to speak on his behalf.

It is indeed a privilage for me to have the opportunity on behalf of the Commonwealth of the Northern Marianas to appear once again before this committee, especially since the several pieces of legislation under consideration today go to the very heart of the relationship between the peoples and the governments of the Northern Mariana Islands and of the United States.

I will limit my comments to S. 2088, 2089, 2090, 2633, and 2729.

Of most importance, Mr. Chairman, to us all are the far-reaching steps which would be taken under Senate bill 2088 to require that the people of the Northern Mariana Islands be treated as U.S. citizens for purposes of various Federal laws. These include laws relating to the Federal employment, military service, diplomatic and consular protection, commerce, political and civil rights, and Federal programs and benefits.

As the committee is well aware, our people repeatedly expressed our desire for U.S. citizenship for over 30 years. When the covenant was put before our people in the Plebiscite we exercised our sovereign right of self-determination and chose freely and willingly to join in political union with the United States. That was now over seven years ago, however, and our Commonwealth and our U.S. citizenship is still not quite a reality. We were repeatedly given to understand that the trusteeship agreement between the United States and the United Nations will be terminated not later than the end of 1981. Unfortunately, last year has come and gone, and 1982 is on the wane as well, and we are still not full U.S. citizens.

While we understand that the negotiations and other proceedings between the United States and the other Micronesian entities are moving toward what I am sure will be a satisfactory conclusion, we are naturally concerned that our own arrangement, concluded so long ago, still remains in limbo.

S. 2088, while it does not extend full U.S. citizenship to our people, is an important step in further perfecting our relationship with our adopted country. With the passage of this legislation, persons from the Northern Marianas will be able to move more freely and fully and join and participate in American life during this interim period, enabling us to more easily and effectively contribute to the Melting Pot which is one of America's greatest strengths without losing our own cultural identity.

S. 2088 will also put the force of law behind many of the administrative decisions of various Federal agencies to treat us as if we were already full U.S. citizens. We are grateful for their courtesy, but all too often their decisions have not percolated down through the bureaucratic ranks, and our our people have met with administrative burdens and barriers which need not have existed. S. 2088 will clarify the policy of Congress in this regard, and it is most welcome.

As you know, Mr. Chairman, this is not the first piece of legislation where we have sought to open doors otherwise closed to us due to the citizenship question. In 1980, we were very gratified that the Congress enacted Public Law 96-351 which enabled citizens of the Northern Marianas to enlist in the Armed Forces of the United States of America, and enlist we have. There is now an active Army Reserve Unit on Saipan, and recruiters from all uniformed services speak in glowing terms of the enthusiasm and patriotism of our young people seeking to serve in the Armed Forces of our country. I expect that similar treatment under the various Federal laws listed in S. 2088 will, when appropriate to individual circumstances, be equally as successful.

I might also point out, Mr. Chairman, that since the inauguration of constitutional government in January 1978, the Northern Marianas has extended to the people of the United States the same sort of privileges in our islands that we ask of you here today except in the ownership of land which as you know holds a very special place in the culture of our people. U.S. citizens in the Northern Marianas enjoy the same rights as the indigenous population. We have waived alien labor permits. We have waived foreign investment procedures. We even permit resident Americans to run for elective public office, and they do. We have now several members of the Senate in our legislature.

Our Commonwealth constitution has been couched from the very beginning in terms of U.S. citizenship, not Mariana citizenship, so even during this transition you have the same rights in the Northern Marianas as I do. It is no less just for the United States to respond in kind by enacting Senate 2088.

Mr. Chairman, this legislation is a direct result of the work of the Commission on Federal Laws appointed by the President pursuant to section 504 of the covenant. As a member of that Commission, I can assure you that many hours of hard work and thorough analysis went into our recommendations. In essence, we are mandated by law, among other things, to make interim reports as appropriate, considering the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law, and the provisions and purposes of this covenant.

I am proud of the manner in which the members of the Commission, mainlanders and islanders alike, worked together in a cooperative and harmonious spirit without provincialty or politics clouding our deliberations. It is appropriate, therefore, Mr. Chairman, that S. 2088, touching as it does on the means for a more cooperative and harmonious relationship during this transitional period, is the first legislation to be considered by your committee from our recommendations.

Mr. Chairman, as the representative of the Commonwealth in the United States, and as a member of the Commission on Federal Laws, and as a proud American, I strongly urge that the committee report S. 2088 to the Senate for passage at the earliest possible date.

Mr. Chairman, the Northern Marianas also support S. 2089 and S. 2090. These are matters relating to the waiver of the requirements under the EPA and also clarifying the jurisdiction of the bankruptcy law.

We have submitted for you, for your consideration, Mr. Chairman, some of our reservations with respect to S. 2633 relating to the transfer of the audit responsibility from the Federal comptroller to the Inspector General, and those you have for the record.

This, Mr. Chairman, concludes my testimony.

[The prepared statement of Mr. Pangelinan follows:]

Office of the Representative to the United States
Commonwealth of the Northern Mariana Islands

MAIN OFFICE
SUITE 700
1016 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
PHONE: (202) 466-5324
TELEX: MARIANAS 64561

MARIANAS HAWAII LIAISON OFFICE
SUITE 348
1221 KAPIOLANI BOULEVARD
HONOLULU, HAWAII 96814
PHONES: (808) 523-8156, 8434

STATEMENT OF

EDWARD DLG. PANGELINAN

Representative to the United States

Commonwealth of the Northern Mariana Islands

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Hearing to Consider Measures
Affecting the Territories and Insular Affairs

September 13, 1982

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

IT IS INDEED A PRIVILEGE FOR ME TO HAVE THE OPPORTUNITY, ON BEHALF OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, TO APPEAR ONCE AGAIN BEFORE THIS COMMITTEE, ESPECIALLY SINCE THE SEVERAL PIECES OF LEGISLATION UNDER CONSIDERATION TODAY GO TO THE VERY HEART OF THE RELATIONSHIP BETWEEN THE PEOPLES AND GOVERNMENTS OF THE NORTHERN MARIANA ISLANDS AND OF THE UNITED STATES.

OF MOST IMPORTANCE TO ALL OF US ARE THE FAR-REACHING STEPS WHICH WOULD BE TAKEN UNDER SENATE BILL 2088 TO REQUIRE THAT THE PEOPLE OF THE NORTHERN MARIANAS BE TREATED AS UNITED STATES CITIZENS FOR PURPOSES OF VARIOUS FEDERAL LAWS. THESE INCLUDE LAWS RELATING TO FEDERAL EMPLOYMENT, MILITARY SERVICE, DIPLOMATIC AND CONSULAR PROTECTION, COMMERCE, POLITICAL AND CIVIL RIGHTS, AND FEDERAL PROGRAMS AND BENEFITS.

AS THE COMMITTEE IS WELL AWARE, OUR PEOPLE REPEATEDLY EXPRESSED OUR DESIRE FOR U.S. CITIZENSHIP FOR OVER THIRTY YEARS. WHEN THE COVENANT WAS PUT BEFORE OUR PEOPLE IN PLEBISCITE WE EXERCISED OUR SOVEREIGN RIGHT OF SELF-DETERMINATION AND CHOSE FREELY AND WILLINGLY TO JOIN IN POLITICAL UNION WITH THE UNITED STATES. THAT WAS NOW OVER SEVEN YEARS AGO, HOWEVER, AND OUR COMMONWEALTH AND OUR U.S. CITIZENSHIP IS STILL NOT QUITE A REALITY. WE WERE REPEATEDLY GIVEN TO UNDERSTAND THAT THE

TRUSTEESHIP AGREEMENT WOULD BE TERMINATED NOT LATER THAN THE END OF 1981. UNFORTUNATELY, LAST YEAR HAS COME AND GONE, AND 1982 IS ON THE WANE AS WELL, AND WE ARE STILL NOT FULL U.S. CITIZENS.

WHILE WE UNDERSTAND THAT THE NEGOTIATIONS AND OTHER PROCEEDINGS BETWEEN THE U.S. AND THE OTHER MICRONESIAN ENTITIES ARE MOVING TOWARD WHAT I AM SURE WILL BE A SATISFACTORY CONCLUSION WE ARE NATURALLY CONCERNED THAT OUR OWN ARRANGEMENT, CONCLUDED SO LONG AGO, STILL REMAINS IN LIMBO. S. 2088, WHILE IT DOES NOT EXTEND FULL U.S. CITIZENSHIP TO OUR PEOPLE, IS AN IMPORTANT STEP IN FURTHER PERFECTING OUR RELATIONSHIP WITH OUR ADOPTED COUNTRY. WITH THE PASSAGE OF THIS LEGISLATION, PERSONS FROM THE NORTHERN MARIANAS WILL BE ABLE TO MORE FULLY ENJOY AND PARTICIPATE IN AMERICAN LIFE DURING THIS INTERIM PERIOD, ENABLING US TO MORE EASILY AND EFFECTIVELY CONTRIBUTE TO THE MELTING POT WHICH IS ONE OF AMERICA'S GREATEST STRENGTHS WITHOUT LOSING OUR OWN CULTURAL IDENTITY.

S. 2088 WILL ALSO PUT THE FORCE OF LAW BEHIND MANY OF THE ADMINISTRATIVE DECISIONS OF VARIOUS FEDERAL AGENCIES TO TREAT US AS IF WE WERE ALREADY FULL UNITED STATES CITIZENS. WE ARE GRATEFUL FOR THEIR COURTESY, BUT ALL TOO OFTEN THEIR DECISIONS HAVE NOT PERCOLATED DOWN THROUGH THE BUREAUCRATIC RANKS, AND OUR PEOPLE HAVE MET WITH ADMINISTRATIVE BURDENS AND BARRIERS WHICH NEED NOT HAVE EXISTED. S. 2088 WILL CLARIFY THE

POLICY OF CONGRESS IN THIS REGARD, AND IS MOST WELCOME.

AS YOU KNOW, MR. CHAIRMAN, THIS IS NOT THE FIRST PIECE OF LEGISLATION WHERE WE HAVE SOUGHT TO OPEN DOORS OTHERWISE CLOSED TO US DUE TO THE CITIZENSHIP QUESTION. IN 1980, WE WERE VERY GRATIFIED THAT THE CONGRESS ENACTED PUBLIC LAW 96-351, WHICH ENABLED CITIZENS OF THE NORTHERN MARIANAS TO ENLIST IN THE ARMED FORCES OF THE UNITED STATES OF AMERICA... AND ENLIST WE HAVE. THERE IS NOW AN ACTIVE ARMY RESERVE UNIT ON SAIPAN, AND RECRUITERS FROM ALL UNIFORMED SERVICES SPEAK IN GLOWING TERMS OF THE ENTHUSIASM AND PATRIOTISM OF OUR YOUNG PEOPLE SEEKING TO SERVE IN THE ARMED FORCES. I EXPECT THAT SIMILAR TREATMENT UNDER THE VARIOUS FEDERAL LAWS LISTED IN S. 2088 WILL, WHEN APPROPRIATE TO INDIVIDUAL CIRCUMSTANCES, BE EQUALLY AS SUCCESSFUL.

I MIGHT ALSO POINT OUT, MR. CHAIRMAN, THAT SINCE THE INAUGURATION OF CONSTITUTIONAL GOVERNMENT IN JANUARY 1978, THE NORTHERN MARIANAS HAS EXTENDED TO THE PEOPLE OF THE UNITED STATES THE SAME SORTS OF PRIVILEGES IN OUR ISLANDS THAT WE ASK OF YOU HERE TODAY. EXCEPT IN THE OWNERSHIP OF LAND, WHICH, AS YOU KNOW, HOLDS A VERY SPECIAL PLACE IN THE CULTURE OF OUR PEOPLE, U.S. CITIZENS IN THE NORTHERN MARIANAS ENJOY THE SAME RIGHTS AS THE INDIGENOUS POPULATION. WE HAVE WAIVED ALIEN LABOR PERMITS, WE HAVE WAIVED FOREIGN INVESTMENT PROCEDURES, WE EVEN PERMIT RESIDENT AMERICANS TO RUN FOR ELECTIVE PUBLIC OFFICE! OUR COMMONWEALTH CONSTITUTION HAS BEEN COUCHED FROM THE

BEGINNING IN TERMS OF U.S. CITIZENSHIP, NOT NORTHERN MARIANA CITIZENSHIP, SO EVEN DURING THIS TRANSITION, YOU HAVE THE SAME RIGHTS IN THE NORTHERN MARIANAS AS I DO. IT IS NO LESS THAN JUST FOR THE U.S. TO RESPOND IN KIND BY ENACTING S. 2088.

MR. CHAIRMAN, THIS LEGISLATION IS A DIRECT RESULT OF THE WORK OF THE COMMISSION ON FEDERAL LAWS, APPOINTED BY THE PRESIDENT PURSUANT TO SECTION 504 OF THE COVENANT. AS A MEMBER OF THAT COMMISSION, I CAN ASSURE YOU THAT MANY HOURS OF HARD WORK AND THOROUGH ANALYSIS WENT INTO OUR RECOMMENDATIONS. IN ESSENCE, WE ARE MANDATED BY LAW, AMONG OTHER THINGS, TO MAKE INTERIM REPORTS AS APPRORIATE, CONSIDERING THE "POTENTIAL EFFECT OF EACH LAW ON LOCAL CONDITIONS WITHIN THE NORTHERN MARIANA ISLANDS, THE POLICIES EMBODIED IN THE LAW AND THE PROVISIONS AND PURPOSES OF THIS COVENANT." I AM VERY PROUD AT THE MANNER IN WHICH THE MEMBERS OF THE COMMISSION, MAINLANDERS AND ISLANDERS ALIKE, WORKED TOGETHER IN A COOPERATIVE AND HARMONIOUS SPIRIT, WITHOUT PROVINCIALITY OR POLITICS CLOUDING OUR DELIBERATIONS. IT IS APPROPRIATE, THEREFORE, THAT S. 2088, TOUCHING AS IT DOES ON THE MEANS FOR A MORE COOPERATIVE AND HARMONIOUS RELATIONSHIP DURING THIS TRANSITIONAL PERIOD, IS THE FIRST LEGISLATION TO BE CONSIDERED BY YOUR COMMITTEE FROM OUR RECOMMENDATIONS.

MR. CHAIRMAN, AS REPRESENTATIVE TO THE UNITED STATES, AS A MEMBER OF THE COMMISSION ON FEDERAL LAWS, AND AS A PROUD AMERICAN, I STRONGLY URGE THAT THE COMMITTEE REPORT S. 2088 TO

THE FULL SENATE FOR PASSAGE AT THE EARLIEST POSSIBLE DATE.

S. 2090

SIMILARLY, MR. CHAIRMAN, WE ARE IN FULL SUPPORT OF S. 2090 WHICH WOULD REQUIRE THE ENVIRONMENTAL PROTECTION AGENCY TO EXEMPT THE NORTHERN MARIANA ISLANDS FROM REQUIREMENTS OF THE CLEAN AIR ACT ON FINDING BY OUR GOVERNOR THAT THE COSTS OF COMPLIANCE WITH AN INDIVIDUAL REQUIREMENT SIGNIFICANTLY OUTWEIGHS ITS BENEFITS.

THE CLEAN AIR ACT AND ITS REGULATIONS WAS WRITTEN WITH THE GREAT LAND MASS OF THE NORTH AMERICAN CONTINENT IN MIND, NOT TINY ISOLATED ISLANDS IN THE MIDDLE OF THE OCEAN. OUR LARGEST ISLAND, SAIPAN, FOR EXAMPLE, IS LESS THAN FIVE MILES WIDE AT ITS WIDEST POINT, AND ANY GASEOUS EMISSIONS WHICH MIGHT OCCUR ARE QUICKLY SWEPT OUT TO SEA BY OUR TRADE WINDS BEFORE THEY CAN TURN INTO AIR POLLUTION. IN FACT, NOBODY FROM EPA OR ELSEWHERE HAS EVER SUGGESTED THAT THE REQUIREMENTS OF THE CLEAN AIR ACT WOULD BE OF ANY BENEFIT TO OUR ISLANDS -- MERELY THAT THEY WERE A LEGAL REQUIREMENT WHICH MUST BE MET, NO MATTER HOW COSTLY OR HOW ABSURD.

TO DEMONSTRATE THE HEIGHTS TO WHICH THIS ABSURDITY COULD REACH, AN EPA CONSULTANT ONCE CAME TO SAIPAN AND TOLD US THAT THE U.S. CORPS OF ENGINEERS POWER BARGE, WHICH WAS THEN

SUPPLYING ELECTRICITY TO THE ENTIRE ISLAND, WOULD HAVE TO BE SHUT DOWN UNLESS ITS SMOKESTACK WERE RAISED TEN FEET -- SOMETHING WHICH THE CORPS HAS NO REASON TO DO AND SOMETHING WE COULD NOT HAVE AFFORDED HAD WE WANTED TO. HE ALSO TOLD US WE WOULD HAVE TO DENY ENTRY TO SHIPS BRINGING THE NECESSITIES AND AMENITIES OF LIFE TO OUR ISOLATED PORTS IF THE SMOKE FROM THEIR SMOKESTACKS WERE TOO DARK AND OPAQUE. NEEDLESS TO SAY OUR COLLECTIVE SIGH OF RELIEF WHEN HE LEFT SAIPAN CREATED MORE AIR POLLUTION THAN ANY OF THE SMOKE HE WAS SO WORRIED ABOUT.

OF IMMEDIATE IMPORTANCE TO US, MR. CHAIRMAN, IS THE REQUIREMENT THAT MOTOR VEHICLES IN THE ISLANDS BE EQUIPPED TO USE UNLEADED FUEL AND CARRY ALL THE STANDARD U.S. ANTI-POLLUTION DEVICES. NOT ONLY IS THE ADDED COST OF THIS EQUIPMENT A SEVERE FINANCIAL BURDEN TO THE PEOPLE OF A COMMUNITY WHERE INCOME LEVELS ARE VASTLY LOWER THAN THE UNITED STATES, BUT IT RESULTS IN FEWER MILES PER GALLON AND A GREATER DEMAND FOR GASOLINE. SINCE ALL OUR GAS MUST BE IMPORTED, AND NO ADDITIONAL GASOLINE STORAGE FACILITIES ARE CONTEMPLATED BY THE OIL COMPANIES, THESE REQUIREMENTS PUT US AT GREATER RISK THAT THE SHORTAGES AND LONG LINES OF A FEW YEARS AGO WILL BE REPEATED.

SINCE WE ARE VERY CLOSE TO JAPAN, MOST OF OUR VEHICLES ARE OF JAPANESE MANUFACTURE. JAPAN PRODUCES TWO TYPES OF VEHICLES THOSE FOR THE UNITED STATES AND THOSE FOR EVERYWHERE ELSE. THE U.S. VERSION IS EQUIPPED BOTH WITH THE ANTI-POLLUTION

DEVICES AND ALL FEDERALLY REQUIRED SAFETY DEVICES. THESE ARE A TEAM WHICH THE MANUFACTURERS WILL NOT SPLIT UP. EVEN IF S. 2090 IS ENACTED IN ITS PRESENT FORM, THEREFORE, WE WILL STILL HAVE TO PAY THE EXTRA MONEY FOR ANTI-POLLUTION DEVICES BECAUSE WE APPARENTLY ARE SUBJECT TO THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT AND CAN'T BUY VEHICLE WITH THE SAFETY DEVICES ALONE.

WE BELIEVE THE ONLY REASONABLE SOLUTION TO BE AN EXEMPTION FROM FEDERAL SAFETY REQUIREMENTS SIMILAR TO THE CLEAN AIR ACT EXEMPTION IN THIS LEGISLATION. THIS WOULD BE BEST DONE AS AN AMENDMENT TO THIS BILL, BUT HOWEVER IT IS DONE, IT IS NECESSARY IF THIS LEGISLATION IS TO HAVE THE DESIRED EFFECT. WE DO NOT BELIEVE EXEMPTING THE NORTHERN MARIANAS FROM FEDERAL SAFETY STANDARDS WOULD EXPOSE OUR PEOPLE TO UNREASONABLE SAFETY HAZARDS. GENERALLY, ISLAND SPEED LIMITS ARE LESS THAN 25 MILES PER HOUR WITH A MAXIMUM LIMIT OF 45 M.P.H. IN A FEW AREAS. WE ARE MOST CONCERNED THAT OUR PEOPLE JUST BE ABLE TO AFFORD A VEHICLE TO TRAVEL FROM FARM TO MARKET, HOME TO MEDICAL FACILITIES AND TO AND FROM WORK, CHURCH AND MARKET. THERE ARE IN THE ISLANDS ONLY SEVERAL THOUSAND VEHICLES AND 87 MILES OF ROADWAY (WHICH WILL TAKE 196 YEARS TO PAVE AT PRESENT APPROPRIATION LEVELS.)

MR. CHAIRMAN, FOR NEARLY 200 YEARS THE UNITED STATES GAVE LITTLE THOUGHT TO ITS ENVIRONMENT. IN THAT TIME, NOT COINCIDENTALLY, IT GREW TO BE THE GREATEST INDUSTRIAL POWER ON THE FACE OF THE EARTH. WE ISLANDERS, ON THE OTHER HAND, HAVE

ALWAYS LIVED CLOSE TO THE SEA, THE LAND, AND THE AIR, AND HAVE COUNTED OUR NATURAL BEAUTY AND CLEAN ENVIRONMENT AS ONE OF THE MOST VALUABLE PARTS OF OUR HERITAGE. AT THE SAME TIME, HOWEVER, OUR PRIVATE SECTOR IS JUST BEGINNING TO GROW AND CANNOT YET SUPPORT THE MANY GOVERNMENT SERVICES NEEDED TO PROVIDE FOR OUR OWN WELFARE. YOU PEOPLE HERE IN THE CONGRESS MAKE UP THE DIFFERENCE, FOR WHICH WE ARE MOST GRATEFUL. UNFORTUNATELY, HOWEVER, YOU WILL HAVE TO CONTINUE TO DO SO FOR ALL ETERNITY, UNLESS WE ARE ABLE TO INCREASE OUR TAX BASE. THIS MEANS PRIVATE SECTOR DEVELOPMENT, BUT THE CONSTRAINTS OF THE INAPPROPRIATE CLEAN AIR ACT REQUIREMENTS WILL SEVERELY RETARD THAT DEVELOPMENT. WE ARE ENTITLED TO BREAK A FEW EGGS WHILE MAKING OUR INDUSTRIAL OMELETTE, JUST AS YOU WERE, BUT WE CAN BE TRUSTED, BECAUSE OF OUR HERITAGE, TO MAKE SURE THAT THIS DOES NOT GET OUT OF HAND. THE LANGUAGE OF S. 2090 HAS BEEN CAREFULLY DRAFTED TO ENSURE THAT ALL THE REQUIREMENTS OF THE CLEAN AIR ACT REMAIN IN FORCE, EXCEPT AS THEY ARE FOUND, ONE-BY-ONE, TO BE INAPPROPRIATE. WE ARE ALSO IN THE FINAL STAGES OF ENACTING OUR OWN ENVIRONMENTAL PROTECTION ACT, WHICH INCLUDES CLEAN AIR PROVISION, AND WHICH WILL PROVIDE A REASONABLE BALANCE BETWEEN ECONOMIC GROWTH AND ECOLOGICAL PROTECTION.

IN SHORT, MR. CHAIRMAN, WE STRONGLY SUPPORT PROMPT ENACTMENT OF S. 2090 TOGETHER WITH A SIMILAR EXEMPTION FROM THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT.

S. 2633

MR. CHAIRMAN, AS ENTHUSIASTIC AS WE ARE ABOUT S. 2088 AND S. 2090, WE ARE EQUALLY CONCERNED ABOUT SEVERAL OF THE PROVISIONS OF S. 2633 WHICH DEALS WITH FEDERAL AUDIT REQUIREMENTS IN THE TERRITORIES, INCLUDING THE NORTHERN MARIANAS. WE DO UNDERSTAND AND AGREE WITH THE FUNDAMENTAL OBJECTIVES OF THE BILL. THE FEDERAL AUDIT FUNCTION SHOULD INDEED BE STRENGTHENED, AND FEDERAL GRANTS SHOULD BE AUDITED WITH GREATER FREQUENCY. TO THE EXTENT THAT THE BILL WOULD HELP ACCOMPLISH THESE OBJECTIVES, WE ARE IN FULL SUPPORT. IN SOME RESPECTS, HOWEVER, THE PRESENT LANGUAGE OF THE BILL WOULD MANDATE EXPENSIVE OR IMPOSSIBLE REQUIREMENTS, REQUIRE DUPLICATION OR TRIPLICATION OF EFFORT, AND BE DESTRUCTIVE OF THE RELATIONSHIP BETWEEN THE U.S. AND THE NMI AS CALLED FOR IN THE COVENANT.

FIRST OF ALL, WE HAVE NO OBJECTION TO THE TRANSFER OF THE FEDERAL AUDIT FUNCTION TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF THE INTERIOR. THIS IS AN INTERNAL MATTER FOR THE CONGRESS, THE PRESIDENT, AND THE SECRETARY OF THE INTERIOR TO DECIDE, AND WE HOLD NO OFFICIAL OPINION ON THE PROPOSED TRANSFER. HOWEVER, WHEREVER THIS FUNCTION IS LOCATED, IT WILL BE INEFFECTIVE IF NOT GIVEN THE NECESSARY RESOURCES, BOTH FISCAL AND HUMAN, TO CARRY OUT ITS DUTIES. THE GENERAL ACCOUNTING OFFICE REPORT WHICH GAVE RISE TO THIS LEGISLATION INDICATES THAT

NEARLY HALF OF THE POSITIONS AUTHORIZED FOR THE FEDERAL COMPTROLLER FOR GUAM/TTPI/CNMI WERE NOT FILLED AT THAT TIME. IN THE LAST YEAR THE BRANCH OF THE FEDERAL COMPTROLLER'S OFFICE RESIDENT ON SAIPAN, WITH RESPONSIBILITY FOR THE NMI AND THE TRUST TERRITORY HAS DWINDLED TO ONLY TWO OR THREE PROFESSIONALS. WHETHER OR NOT THESE PEOPLE REMAIN WITH THE FEDERAL COMPTROLLER OR ARE TRANSFERRED TO THE INSPECTOR GENERAL, THEY ARE INSUFFICIENT TO DO THE JOB.

SECOND, THE SUGGESTION THAT A COMPREHESIVE ANNUAL FINANCIAL REPORT MEETING NATIONAL COUNCIL ON GOVERNMENTAL ACCOUNTING STANDARDS BE COMPLETED BY OUR EXECUTIVE BRANCH WITHIN FOUR MONTHS AFTER THE CLOSE OF A FISCAL YEAR IS CERTAINLY A DESIRABLE GOAL TO WORK TOWARDS. TO REQUIRE IT NOW, HOWEVER, GIVEN THE PRESENT TECHNICAL CAPABILITY OF OUR PERSONNEL, IS LITTLE MORE THAN WISHFUL THINKING. WHILE WE APPLAUD THE SEPARATION WHICH HAS TAKEN PLACE BETWEEN THE AUDIT FUNCTION AND TECHNICAL ASSISTANCE, THAT ASSISTANCE WILL HAVE TO BE INCREASED SIGNIFICANTLY FOR SEVERAL YEARS IF WE ARE EVER TO BE ABLE TO PUBLISH A REASONABLY ACCURATE ANNUAL REPORT AT ALL, LET ALONE MEETING NCCA STANDARDS AND HAVING IT COMPLETED WITHIN 120 DAYS AFTER THE CLOSE OF A FISCAL YEAR.

EVEN IF WE COULD PRODUCE SUCH A REPORT, THE BILL THEN GOES ON TO REQUIRE THAT THE GOVERNOR ARRANGE FOR AN INDEPENDENT AUDIT OF THE REPORT. THIS WILL RESULT IN EVERY ACTIVITY OF OUR GOVERNMENT BEING AUDITED THREE TIMES EACH YEAR. FIRST OF ALL, THE FEDERAL COMPTROLLER OR INSPECTOR GENERAL RETAINS HIS AUTHORITY AND DUTY TO AUDIT OUR ACCOUNTS. SECOND, SECTION 12 OF ARTICLE II OF THE NMI CONSTITUTION REQUIRES THAT OUR PUBLIC AUDITOR DO THE SAME THING. SINCE THIS IS A CONSTITUTIONAL REQUIREMENT NOT DEPENDENT ON ACTION BY THE GOVERNOR, IT WOULD NOT APPEAR TO MEET THE REQUIREMENT OF SECTION 3(a) OF S. 2633, SO THE GOVERNOR WOULD HAVE TO ARRANGE FOR A THIRD "INDEPENDENT" AUDIT. I WONDER WHEN OUR FINANCE PERSONNEL ARE GOING TO BE ABLE TO DO THEIR BASIC JOB OF FINANCIAL MANAGEMENT IF THEY MUST SPEND NEARLY ALL THEIR TIME WITH THREE DIFFERENT SETS OF AUDITORS.

I ALSO DOUBT VERY MUCH WHETHER WE HAVE SUFFICIENT QUALIFIED AUDITORS IN THE COMMONWEALTH TO HAVE SUCH AN AUDIT BE PERFORMED LOCALLY. THE IMPORTATION OF ACCOUNTANTS TO FULFILL THE REQUIREMENTS OF THIS BILL WILL BE VERY COSTLY, ESPECIALLY SINCE IT IS A DUPLICATION, OR RATHER TRIPLICATION, OF EFFORT. IT IS NOT CLEAR WHETHER WE ARE BEING ASKED TO DIVERT MUCH-NEEDED FUNDS FOR THIS EMPTY PURPOSE OR WHETHER THE INTENTION IS THAT THIS BE FUNDED BY THE FEDERAL GOVERNMENT. WE FRANKLY CANNOT AFFORD TO DO IT, AND I DOUBT WHETHER THIS COMMITTEE WOULD BE WILLING TO DO SO EITHER.

FINALLY, MR. CHAIRMAN, THIS BILL IS A DIRECT VIOLATION OF THE COVENANT, WHICH SO CAREFULLY PROVIDES FOR A POSITIVE RELATIONSHIP BETWEEN THE NORTHERN MARIANA ISLANDS AND THE UNITED STATES. FOR EXAMPLE, THERE IS A REQUIREMENT THAT OUR GOVERNOR SUBMIT HIS REPORT TO THE HIGH COMMISSIONER OF THE

TRUST TERRITORY, AMONG OTHERS. WE HAVE NOT BEEN SUBJECT IN ANY WAY TO THE JURISDICTION OF THE HIGH COMMISSIONER SINCE 1976 AND WE CANNOT, IN GOOD CONSCIENCE, SUBMIT IN ANY WAY OR FORM TO THAT OFFICE. THE SUBMISSION OF THE PROPOSED REPORT TO THE HIGH COMMISSIONER WOULD BE A GIANT STEP BACKWARDS ON THE ROAD TO OUR POLITICAL UNION, AND WE MUST RESIST SUCH AN UNFORTUNATE OCCURENCE WITH THE GREATEST OF URGENCY.

EVEN MORE TO THE POINT, THERE ARE DIRECT VIOLATIONS OF SECTION 502(a)(3) OF THE COVENANT AT PAGE 8, LINES 17 THROUGH 21, AND PAGE 10, LINES 8 THROUGH 12, OF THE BILL. SECTION 502(a)(3) PROVIDES THAT AMENDMENTS TO LAWS WHICH APPLY TO US AS APPLICABLE IN THE TRUST TERRITORY TERMINATE ALONG WITH THE TRUSTEESHIP AGREEMENT . THE UNILATERAL ATTEMPT TO EXEMPT THIS BILL FROM THE COVENANT IS A DIRECT VIOLATION OF THE AGREEMENT BETWEEN OUR PEOPLES AND IS UNNECESSARY IN ANY CASE. IF LEGISLATION IS TO APPLY TO US ON AN INDEFINITE BASIS, IT SHOULD BE ENACTED SPECIFICALLY FOR US AS CONTEMPLATED IN THE COVENANT, NOT AS PART OF TRUST TERRITORY-ORIENTED LEGISLATION. THIS GIVES THE CONGRESS AND THE NMI THE OPPORTUNITY TO SHAPE PROVISIONS WHICH ARE MORE APPROPRIATE FOR THE COMMONWEALTH, MOVING AS WE ARE INTO THE AMERICAN POLITICAL FAMILY, THAN THE OTHER ENTITIES OF THE TRUST TERRITORY WHICH ARE NOT MOVING IN THAT DIRECTION.

ALL IN ALL, MR. CHAIRMAN, I MUST OPPOSE ENACTMENT OF S. 2633 IN ITS PRESENT FORM. IF THE SECRETARY OF THE INTERIOR WISHES TO TRANSFER THE AUDIT FUNCTION TO HIS INSPECTOR GENERAL, HE CAN DO

THAT BY SECRETARIAL ORDER. OTHERWISE, YOU CAN DO SO BY VERY SIMPLE LEGISLATION, IF YOU WISH. THERE IS NO NEED FOR THE UNREALISTIC AND EXPENSIVE AUDIT REQUIREMENTS OF THIS BILL, HOWEVER, AND I HOPE THAT THE COMMITTEE WILL SEE FIT NOT TO REPORT IT TO THE SENATE, AT LEAST WITHOUT REMOVING THOSE PROVISIONS.

S. 2729

WE DO NOT SUPPORT TITLE III OF S. 2729 IN ITS ENTIRETY. WE FAVOR EXTENDING OR REAFFIRMING THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS IN ALL MATTERS INVOLVING THE GOVERNMENT OF THE TRUST TERRITORY FOR THE PACIFIC ISLANDS ESPECIALLY TO THE EXTENT THOSE MATTERS AFFECT THE PEOPLE AND GOVERNMENT OF THE NORTHERN MARIANAS OR INVOLVE ACTIONS IN WHICH THEY ARE OR MUST BE MADE A PARTY.

THE NORTHERN MARIANAS ARE NO LONGER ADMINISTERED BY THE TRUST TERRITORY GOVERNMENT BUT THERE ARE CERTAIN ACTIVITIES OF THAT GOVERNMENT WHICH DIRECTLY AFFECT OUR PEOPLE AND GOVERNMENT. FOR EXAMPLE, THE TRUST TERRITORY GOVERNMENT ISSUES THE PASSPORTS WE NEED FOR TRAVEL. THERE IS ALSO THE DISPOSITION OF PROPERTY AND ECONOMIC DEVELOPMENT FUNDS. THESE ARE OF COURSE MATTERS WHICH INVOLVE THE COVENANT BETWEEN THE UNITED STATES AND THE NORTHERN MARIANA ISLANDS. THE COVENANT AUTHORIZES THE DISTRICT COURT AND GIVES IT JURISDICTION " IN ALL CAUSES ARISING UNDER THE CONSTITUTION, TREATIES OR LAWS OF THE

UNITED STATES," SECTION 402. THERE IS NO SOUND REASON FOR LIMITING THIS JURISDICTION BY EXCLUDING THE TRUST TERRITORY GOVERNMENT FROM ITS SCOPE PARTICULARLY WHEN THE UNITED STATES GOVERNMENT IS OTHERWISE GENERALLY SUBJECT TO ITS JURISDICTION. REVIEW OF AN UNCONSTITUTIONAL OR UNLAWFUL ACT BY THE TRUST TERRITORY GOVERNMENT IS BEYOND ANY DOUBT A PROPER AND LOGICAL FUNCTION OF THE UNITED STATES DISTRICT COURT. WE HAVE SUBMITTED FOR YOUR REVIEW AND CONSIDERATION COMMUNICATIONS FROM THE COMMONWEALTH JUDICIARY, THE U.S. DISTRICT COURT IN THE NORTHERN MARIANAS, AND FOR THE NORTHERN MARIANAS AND FOR THE NORTHERN MARIANAS BAR ASSOCIATION PRESENTING THEIR RESPECTIVE VIEWS ON TITLE III OF S. 2729.

WE ALSO CONCUR WITH THE RECOMMENDATION OF THE COMMISSION ON FEDERAL LAWS THAT THE DISTRICT COURT BE GIVEN THE JURISDICTION OF A U.S. BANKRUPTCY COURT.

S. 2089

FOR THE REASONS SET FORTH IN THE RECOMMENDATIONS OF THE COMMISSION ON FEDERAL LAWS, WE SUPPORT S. 2089 CLARIFYING THE APPLICABILITY OF THE FEDERAL TORT CLAIMS ACT FOR CLAIMS ARISING IN THE NORTHERN MARIANA ISLANDS.

CONCLUSION

THIS CONCLUDES MY STATEMENT MR. CHAIRMAN. I APPRECIATE THE COURTESY WHICH YOU AND THE MEMBERS OF THE COMMITTEE HAVE SHOWN TO ME BY INVITING ME TO TESTIFY HERE BEFORE YOU TODAY. IF YOU HAVE ANY QUESTIONS AT THIS TIME, I WOULD BE HAPPY TO RESPOND. THANK YOU AGAIN FOR THE OPPORTUNITY TO APPEAR HERE TODAY.

RECEIVED AUG 20 1982

Commonwealth Court
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ROBERT A. HEFNER
CHIEF JUDGE
SAIPAN, MARIANA ISLANDS 96950

August 16, 1982

Honorable Edward DLG. Pangelinan
CNMI Representative to the
United States
Suite 700
1016 Sixteenth Street, N.W.
Washington, D. C. 20036

Dear Eddie:

It is with some sense of frustration that I write this letter and I am not sure there is anything you can do about the situation.

By the grapevine I understand the proposal to phase out the High Court of the Trust Territory reached the Department of Interior. Since then I have received no response or comment.

The proposed Secretarial Order, House Resolution 6859 (set for hearing on August 19, 1982 before Rep. Won Pat) and other indications here point to a settled policy of Interior to perpetuate the existence of the High Court.

I am informed that the High Court is recruiting a law clerk, preparing to purchase a new car, and that a new justice will be appointed to the Court.

In the meantime, litigants, counsel and legislature are continuously asking about decisions pending in the High Court for years. In a word, the situation is ludicrous but no one in Interior seems to care.

Unless the High Court cases are transferred over to a court that can efficiently and expeditiously dispose of them, the situation just continues. I believe the District Court of the Northern Mariana Islands could fill the void.

To make matters worse, the FSM Congress passed a resolution requesting that Associate Justice Gianotti of the High Court not be allowed to hear any more FSM cases. The Acting Chief Justice of the High Court has honored that request thereby allowing the legislative branch of a different government to dictate who should sit on judicial matters. This means that Judge Gianotti has a total of 12-16 cases he has left to hear in Palau/Marshalls.

I was requested by the Acting Chief Justice of the High Court to hear the last four or five criminal cases in Yap as a designated judge of the High Court because Judge Gianotti was "disqualified." When I discovered the reasons for the "disqualification", I declined to assist the High Court. Judge Laureta who also serves as a designated judge on the High Court, likewise declined to serve.

I estimate it would take one judge less than 10 months to dispose of all the pending High Court cases. No law clerk is needed nor are the three court reporters who sit on Capitol Hill.

How does this affect the Commonwealth? The High Court nows occupies a total of seven houses at the same time the Commonwealth is waiting for 18 houses so employees can be hired. Several Mariana Island cases have been pending in the High Court so long that people are actually dying waiting for a resolution of their case. The District Court of the NMI may be partially shut down due to the lack of business when it could easily take over and dispose of the High Court cases. And, we are talking about a comparative sizeable savings to the U. S. taxpayers which will aid the Commonwealth in its requests for funds from the U.S. Congress.

As a lawyer, I am sure you are interested in the efficient administration of justice. Is there anyone you can suggest to start some meaningful dialogue and solution to the problem?

Sincerely yours,

Bob

NORTHERN MARIANAS BAR ASSOCIATION
Saipan CM 96950

June 28, 1982

Hon. Lowell Weicker
The Senate
United States Congress
Washington, D.C.

Dear Senator Weicker:

The Northern Marianas Bar Association is in receipt of a copy of a draft bill to amend or repeal certain provisions of the Organic Act applicable to the Virgin Islands, and for other purposes. Among these other purposes are provisions which would materially affect the practice of law in the Commonwealth of the Northern Marianas. Since we are informed that you are the author of the draft, we hope that you will consider our comments on those provisions which apply to us.

The Northern Marianas Bar Association supports, in principle, the early termination of the High Court of the Trust Territory of the Pacific Islands. Section 301 of the bill would necessitate the perpetuation of the High Court, possibly for as long as 20 years beyond the termination of the Trusteeship. In light of the relatively small number of cases over which the Court would have jurisdiction, we do not believe that the continuation of the existance of the Court is warranted in light of the extremely high cost to the taxpayer.

We believe that the District Court for the Northern Mariana Islands is as well/or better suited than the High Court to hear and decide in which the Trust Territory is involved. In the first place, that Court is already in existance, and would require no additional appropriation of public funds to enable it to handle the slight increase in workload which would result from vesting in its jurisdiction over such cases. Indeed, as the section-by-section analysis of the bill points out, the Court is already exercising that jurisdiction. In the second place, as a Court of the United States, whose judge is appointed by the President subject to the advice and consent of the United States Senate, we have every reason to expect that the quality of justice would not in any way be diminished in cases in which the Trust Territory was involved.

Accordingly, we would recommend that Section 301 be amended, not only to affirm that jurisdiction over the Trust Territory Government, its agencies and instrumentalities, and its officers and employees, is vested in the District Court for the Northern Mariana Islands, but also to provide that all pending cases involving the Trust Territory shall be transferred to the District Court.

Moreover, Department of the Interior Order No. 3039, which authorizes the establishment of successor governments in the Trust Territory, has resulted in some degree of confusion in respect of the judiciary. We see no reason why the Courts of the four surviving entities should not be able to assume jurisdiction of all cases (other than those involving the Trust Territory, which are discussed above) presently pending before the High Court, at the pre-trial as well as the post-trial stage. The Trust Territory High Court should retain jurisdiction only over those cases which are currently in active trial or in which a decision (either at the trial or the appellate level) is pending. Indeed, Department of the Interior Order No. 3039 has been interpreted, albeit informally, by a court of at least one of the surviving entities, as requiring that the High Court retain jurisdiction over post-judgment matters, such as enforcement of judgments for the payment of money. Such interpretation would also necessitate the perpetuation of the existence of the High Court for as long as 20 years, again without sufficient justification in our opinion. The courts of the surviving entities are perfectly well-equipped to handle such matters. We would hope that provisions could be inserted in the draft bill which would provide for the immediate transfer of all cases which are in the pre-trial or post-judgment stages to the courts of the surviving entities.

The Bar Association has not taken a position with respect to Section 302 of the draft bill. However, we would respectfully suggest that you consider the position of the Ninth Circuit, as expressed in Sablan -v- Santos, 634 F. 2nd 1153 (1980), in which the Court held that, in cases in which jurisdiction of the District Court for the Northern Mariana Islands is invoked under 48 U.S.C. §1694a(b), rather than (a), appeals are taken to the Appellate Division of the District Court, rather than directly to the Ninth Circuit. . From my own point of view, as a practioner in the Northern Marianas, review of such cases by the local Appellate Division is far more economical for my clients than review directly by the Ninth Circuit. Of course, where the Federal jurisdiction of the District Court is originally invoked, appeals should be directly to the Ninth Circuit.

The Bar Association stands ready to assist you in any way possible concerning this legislation. Please do not hesitate to call on us.

Very truly yours,

MICHAEL A. WHITE, ESQ.
President

cc: Hon. Alfred Laureta
Hon. Robert A. Hefner
Hon. Edward C. King
Hon. Harold W. Burnett
Hon. Mamoro Nakamura
Hon. Richard I. Miyamoto
Hon. Pedro I. Sanjuan
Hon. Edward DLG. Pangelinan ✓
Hon. Pedro P. Tenorio
Hon. Benigno R. Fitial
Hon. Olympio T. Borja

RECEIVED AUG 20 1982

United States District Court
for the
Northern Mariana Islands
P.O. Box 587
Saipan, CM 96950

Alfred Laureta
Judge

August 13, 1982

Honorable Antonio B. Won Pat
Chairman
Subcommittee on Insular Affairs
Committee on Interior and
Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 6859

Dear Mr. Chairman and Members of the Committee:

Thank you for the opportunity to submit comments on H.R. 6859. Inasmuch as this bill contains proposals affecting the Virgin Islands, Guam, and the Northern Mariana Islands, I will have no comments to make regarding Titles I and II of the bill. I will, therefore, limit my comments to Title III of this bill which deals with the District Court for the Northern Mariana Islands.

At the outset, may I state that the bill's title appears to be somewhat insufficient inasmuch as it does not indicate that its provisions relate to the District Court for the Northern Mariana Islands. The title specifically identifies the bill as one for the amendment of the organic acts applicable to Guam and the Virgin Islands, and for other purposes. It doesn't clearly notify either legislators or the general public that the bill could significantly affect the jurisdiction of the District Court of the Northern Mariana Islands. I suggest that the Title of the bill be appropriately amended.

Section 301. I have no comments to add to the drafters' analysis made on this section except to say that I concur with the intent of the proposal.

Section 302. With respect to this section of the bill, I must emphasize that I am commenting only upon its form and clarity and not upon the merits of its substantive content. I must also point out that this section proposes to amend Section 1694a(a) of the Act which defines the federal question and diversity jurisdiction of the District Court of the Northern Mariana Islands.

As drafted, Section 302 contains internal inconsistencies which confuse rather than clarify the circumstances under which Congress would intend to allow or to restrict suits against the Trust Territory. Section 302 seems to expressly provide for certain types of suits. Yet, its concluding sentence would immunize the Trust Territory against actions arising out of acts or omissions "colorably related" to the performance of "official duties" by the Trust Territory officers, employees, agencies or instrumentalities. This sentence could conceivably apply to almost any act performed by a Trust Territory governmental employee. Thus, it effectively nullifies and renders meaningless the preceding provisions of Section 302.

Section 302 should more clearly state what it intends to achieve. I am unconvinced that it does so as presently drafted. Section 302 should be amended to indicate whether or not it proposes to confer jurisdiction over the Trust Territory and if so, under what more clearly specified circumstances. Failure to do this would only invite extended litigation directed at defining and construing the intent of the language in Section 302.

I must take some exception to the content of the bill's Sectional Analysis insofar as it relates to the holding in the case of *People of Saipan v. United States Department of the Interior*, 502 F.2d 90, 95-96, 99-100 (9th Cir. 1974), *cert. denied* 420 U.S. 1003 (1975). The Analysis, I believe, is predicated upon partially erroneous reading of *People of Saipan*. Page 12 of the Analysis states that *People of Saipan* held that: (1) the Trust Territory government is not a "federal agency"; and (2) actions against that government are not directly reviewable in the federal courts.

It is correct that *People of Saipan* concluded that the Trust Territory government is not a "federal agency" but for purposes of the Administrative Procedure Act (APA) or the National Environmental Policy Act. 502 F.2d at 96. The court in *People of Saipan* so concluded because territories and possessions are specifically immune from APA review. The court reasoned that the Trust Territory government fits within this exemption. 502 F.2d at 95.

However, I do not believe that *People of Saipan* broadly decided that all actions of the Trust Territory government are not directly reviewable in the federal courts.

As one ground in support of its conclusion that the Trust Territory government is an exempt territorial government rather than a "federal agency" subject to the APA, the court stated that the intention of the United Nations:

> "to foster self-government in the Trust Territory constrains us not to hold that the actions of the local government are reviewable in the same manner as the actions of domestic federal agencies in a federal district court several thousand miles from the islands." 502 F.2d at 95-96.

When fairly read in context, this statement merely supported the Trust Territory's APA exemption as a territorial, non-federal agency. People of Saipan held that rights under the Trusteeship Agreement for the Former Japanese Mandated Islands [61 Stat. 3301 (1947)] are not initially enforceable in federal court. 502 F.2d at 99-100. The Court reasoned that, as a matter of comity, Trusteeship Agreement rights should be initially asserted before the High Court. 502 F.2d at 99-100. People of Saipan does not contain a holding that any action against the Trust Territory under any law is not directly justifiable in federal court.

The Trust Territory government has argued in suits before this Court that this Court has no jurisdiction over the Trust Territory government, and, further that such suits should be filed and tried in the High Court of the Trust Territory. This Court has, nevertheless, held to the contrary and has applied this ruling where the Trust Territory is being sued on either federal or local grounds.

As permitted by the Covenant, the Commonwealth of Northern Mariana Islands enacted into law P.L. 3-14, which divests this Court of jurisdiction over civil and criminal matters arising under "local" law. This law goes in effect on January 10, 1983 and from that date on all matters arising under local law will be tried in the Commonwealth Trial Court. I mention this to point out that even if Congress were to immunize the government of the Trust Territory from suits in the District Court, there remains the probability and likelihood that the Trust Territory may still be subject to suit in the Commonwealth Trial Court.

Section 303. This amendment would limit the appellate jurisdiction of this Court only to those appeals from decisions and orders of the local Commonwealth Trial

Court. The case of Sablan v. Santos, 634 F.2d 1153 (9th Circuit) held that appeals from this Court's trial decisions on local law matters, likewise, had to be taken to the appellate division of this Court. The purpose behind this amendment as described in the analysis will be rendered moot after January 10, 1983 since P.L. 3-14, as I mentioned earlier, effectively divests this Court of jurisdiction over all civil and criminal matters arising under local law. Appeals from this Court will follow the same course as an appeal from other U.S. district courts after January 10, 1983.

Again, my appreciation for inviting my comments and hope that I have been of some assistance to you.

Respectfully,

Alfred Laureta

Alfred Laureta
U.S. District Judge

AL:la

NORTHERN MARIANAS BAR ASSOCIATION
Saipan CM 96950

Edw. DLG.
Pangelinan

August 13, 1982

RECEIVED AUG 20 1982

Hon. Antonio B. Won Pat, Chairman
Subcommittee on Insular Affairs
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Won Pat:

Thank you for your letter of July 28, 1982, requesting the views of the Northern Marianas Bar Association on four bills pertaining to the Territories. We regret that, due to the distance and short notice, the Association will be unable to be present or testify at the hearing. However, the Association has asked me to transmit our comments on these measures to you.

The Association takes no position on H.R. 5688, H.R. 6680, or H.R. 6780. However, we hope that our views on Title III H.R. 6859 will be taken into consideration. Our position, on a section-by-section basis, follows.

Section 301. The Association generally supports this proposal. Although it does not affect our position, we presume that the proposed amendment to Section 1694b(1) would not affect the term of the incumbent.

Section 302. The Association strongly opposes this amendment, which would qualify the jurisdiction of the District Court with respect to the Trust Territory Government.

In previous correspondence concerning the subject, a copy of which is enclosed herewith, the Association expressed its belief that all matters which are now pending before the Trust Territory High Court, except for matters in active trial or awaiting a decision after trial, should be transferred to the District Court for the Northern Mariana Islands, or to the courts of the Northern Mariana Islands, Palau, the Federated States of Micronesia, or the Republic of Marshall Islands, as appropriate. In all future cases in which (a) the Trust Territory Government is the Plaintiff, or (b) the Trust Territory Government or its agency or instrumentality is a defendant, or (c) an officer or employee of the Trust Territory Government is a defendant, and the case relates to an act or omission colorably related to official duties, jurisdiction should be vested in the Trial Division of the District Court. This would not represent a signifant expansion of the jurisdiction which that Court has already found it has over the Trust Territory. The immunities set forth in the Trust Territory Code would not be in any way affected.

We recognize the legitimate concerns of the United States Government that jurisdiction over the Trust Territory Government should not be vested in an independent court. However, we do not believe that perpetuating the Trust Territory High Court is an appropriate means of dealing with that concern. That Court currently cost the taxpayers nearly a half million dollars per year. All of the interests of the United States could be at least as well served if jurisdiction in cases involving the Trust Territory were transferred to the District Court for the Northern Mariana Islands -- whose judge is, after all, appointed by the President of the United States, with the advice and consent of the United States Senate. The implication of Section 302 is that the existence of the High Court will be perpetuated well beyond the termination of the Trusteeship Agreement. We do not believe that this is consistent with the overall objectives of the United States in administering the Trust Territory.

Finally, Section 302, as it is presently written, is susceptible to varying interpretations, and may well result in an increase in litigation by parties over jurisdictional questions. In particular, the intent of the restriction imposed by the last sentence of the Section is unclear; it might easily be interpreted as effectuating a broadening of official immunity beyond that now enjoyed under applicable statutory and case law.

In summary, it is our opinion that Section 302 is not a workable solution to the practical problems involving the Trust Territory Government as it prepares to go out of existence. We urge that this Section not be enacted.

Section 303. The Association supports subsection (a). We agree with the objective of the proposed amendment, which would preclude the Government of the Northern Mariana Islands from restricting the ability of the Appellate Division of the District Court to review cases involving the Constitution, treaties, or laws of the United States.

We also support subsection (b), with one minor reservation. Although this proposed paragraph makes no substantive change

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in existing law, the Association wishes to express its concern that a single judge of the District Court has the power to dismiss an appeal for want of jurisdiction. The question of jurisdiction may involve substantial legal issues, particularly in the case of the Commonwealth where the judiciary must deal with recent enactments often without clear precedent or guidance. While the local Rules of Appellate Procedure do provide for the review of an Order of Dismissal entered by a single Judge, we suggest that the exercise of such power should, by statute, either be restricted or subject to review by a full panel of the Court.

The Association strongly opposes subsection (c), to the extent that it reduces the jurisdiction of the Ninth Circuit Court of Appeals to hear cases arising out of the Northern Mariana Islands.

As you are aware, the Northern Marianas is a small, circumscrit community. The judiciary is comprised of a relatively small group of judges, all of whom live in close geographical and social proximity. The very organization of the Appellate Division of the District Court indicates that Appellate review of a trial judge's decision is had by other trial judges, and not by a full time appellate tribunal. A judge hearing an appeal knows full well that the judge whose decision he is now reviewing will, in the very near future, be sitting on an appellate panel to review his own decision. The normal checks upon judicial authority present in larger, more populous communities are not present in the Northern Marianas.

Moreover, we feel that resort to an off-island court gives more respect and prestige to the judiciary as a whole. Certainly, the bench and bar can both benefit from the fresh approach which is frequently brought to a case by outside judges, and from the the wisdom and scholarship which the Ninth Circuit has demonstrated in its review of those cases which have heretoforth been brought before it. Furthermore, review by the Ninth Circuit will further the goals of our people for closer ties with the United States, by assuring that our decisional law courports with the mainstream of United States law.

We recognize that the intent of this subsection is to equate the courts of the Northern Mariana Islands to the courts of a state. In the federal system, the decisions of the supreme court of a state are reviewable only by the United States Supreme Court, and then only under the most limited circumstances. On a nationwide basis, the Supreme Court grants a writ of certiorari in only three to four percent of the cases docketed with it. In recent years, it has become apparent--indeed, the Court itself has acknowledged the fact--that as its caseload continues to escalate, the Court will be increasingly overburdened. Consequently, the likelihood of a case being accepted for review will diminish even further. The Court tends to accept only cases which have important, national implications. In light of our geographic remoteness. small size, and unique political structure, we consider it extremely unlikely that the Supreme Court would ever exercise discretionary jurisdiction in a case arising out of the courts of the Northern Marianas. Thus, any chance of review beyond the Appellate Division of the District would effectively be foreclosed if access to the Ninth Circuit is eliminated.

The framers of the Convenant were well aware of this fact, As a consequence, the Commonwealth Convenant specifically provides for review of local decisions by the Ninth Circuit. In our view, this is the only practical way to assure review within the context of the federal judicial system.

Our opinion takes into the consideration the already-announced intention of the Ninth Circuit to give great weight to the determination of questions of local law by our local courts. We believe that any considerations of maintaining local control over local issues is far outweighed by the benefits of resort to the Ninth Circuit.

The Association does not take a position with reference to any other sections of H.R. 5859.

Again, we appreciate the opportunity to express our opinion on this important measure. Please do not hesitate to contact us at any time in the future.

Very truly yours,

MICHAEL A. WHITE, ESQ.
President

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June 28, 1982

Hon. Lowell Weicker
The Senate
United States Congress
Washington, D.C.

Dear Senator Weicker:

The Northern Marianas Bar Association is in receipt of a copy of a draft bill to amend or repeal certain provisions of the Organic Act applicable to the Virgin Islands, and for other purposes. Among these other purposes are provisions which would materially affect the practice of law in the Commonwealth of the Northern Marianas. Since we are informed that you are the author of the draft, we hope that you will consider our comments on those provisions which apply to us.

The Northern Marianas Bar Association supports, in principle, the early termination of the High Court of the Trust Territory of the Pacific Islands. Section 301 of the bill would necessitate the perpetuation of the High Court, possibly for as long as 20 years beyond the termination of the Trusteeship. In light of the relatively small number of cases over which the Court would have jurisdiction, we do not believe that the continuation of the existance of the Court is warranted in light of the extremely high cost to the taxpayer.

We believe that the District Court for the Northern Mariana Islands is as well/or better suited than the High Court to hear and decide in which the Trust Territory is involved. In the first place, that Court is already in existance, and would require no additional appropriation of public funds to enable it to handle the slight increase in workload which would result from vesting in its jurisdiction over such cases. Indeed, as the section-by-section analysis of the bill points out, the Court is already exercising that jurisdiction. In the second place, as a Court of the United States, whose judge is appointed by the President subject to the advice and consent of the United States Senate, we have every reason to expect that the quality of justice would not in any way be diminished in cases in which the Trust Territory was involved.

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Accordingly, we would recommend that Section 301 be amended, not only to affirm that jurisdiction over the Trust Territory Government, its agencies and instrumentalities, and its officers and employees, is vested in the District Court for the Northern Mariana Islands, but also to provide that all pending cases involving the Trust Territory shall be transferred to the District Court.

Moreover, Department of the Interior Order No. 3039, which authorizes the establishment of successor governments in the Trust Territory, has resulted in some degree of confusion in respect of the judiciary. We see no reason why the Courts of the four surviving entities should not be able to assume jurisdiction of all cases (other than those involving the Trust Territory, which are discussed above) presently pending before the High Court, at the pre-trial as well as the post-trial stage. The Trust Territory High Court should retain jurisdiction only over those cases which are currently in active trial or in which a decision (either at the trial or the appellate level) is pending. Indeed, Department of the Interior Order No. 3039 has been interpreted, albeit informally, by a court of at least one of the surviving entities, as requiring that the High Court retain jurisdiction over post-judgment matters, such as enforcement of judgments for the payment of money. Such interpretation would also necessitate the perpetuation of the existence of the High Court for as long as 20 years, again without sufficient justification in our opinion. The courts of the surviving entities are perfectly well-equipped to handle such matters. We would hope that provisions could be inserted in the draft bill which would provide for the immediate transfer of all cases which are in the pre-trial or post-judgment stages to the courts of the surviving entities.

The Bar Association has not taken a position with respect to Section 302 of the draft bill. However, we would respectfully suggest that you consider the position of the Ninth Circuit, as expressed in Sablan -v- Santos, 634 F. 2nd 1153 (1980), in which the Court held that, in cases in which jurisdiction of the District Court for the Northern Mariana Islands is invoked under 48 U.S.C. §1694a(b), rather than (a), appeals are taken to the Appellate Division of the District Court, rather than directly to the Ninth Circuit. From my own point of view, as a practioner in the Northern Marianas,

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review of such cases by the local Appellate Division is far more economical for my clients than review directly by the Ninth Circuit. Of course, where the Federal jurisdiction of the District Court is originally invoked, appeals should be directly to the Ninth Circuit.

The Bar Association stands ready to assist you in any way possible concerning this legislation. Please do not hesitate to call on us.

Very truly yours,

MICHAEL A. WHITE, ESQ.
President

cc: Hon. Alfred Laureta
Hon. Robert A. Hefner
Hon. Edward C. King
Hon. Harold W. Burnett
Hon. Mamoro Nakamura
Hon. Richard I. Miyamoto
Hon. Pedro I. Sanjuan
Hon. Edward DLG. Pangelinan
Hon. Pedro P. Tenorio
Hon. Benigno R. Fitial
Hon. Olympio T. Borja

United States District Court
for the
Northern Mariana Islands
P.O. Box 687
Saipan, CM 96950

Alfred Laureta
Judge

May 18, 1982

Mr. Edward DLG. Pangelinan
Representative to the United States
Suite 700
1016 Sixteeth St., N.W.
Washington, D.C. 20036

Dear Representative Pangelinan:

In response to your recent request, I am submitting comments on the territorial courts bill proposed by the Interior and Justice Departments. I focus upon sections 301 and 302, which concern the jurisdiction of the District Court for the Northern Mariana Islands.

I have reviewed comments submitted by Mr. Peter Van Name Esser, the Acting Attorney General of the Commonwealth of the Northern Mariana Islands, and Mr. Thomas Mattson, the Executive Director of Micronesian Legal Services Corporation. Those comments respectively raise important issues warranting consideration. My comments suggest additional points which might be weighed.

I cautiously emphasize that I submit my comments only to identify potential issues, rather than to intimate a decisive or concrete position on those issues. If the proposed bill became law, a legal challenge to it could conceivably be filed in the District Court for the Northern Mariana Islands. The discussion which follows necessarily represents my tentative reactions rather than my firm conclusions.

Section 301

Section 301 would take away this court's jurisdiction over the Trust Territory government in federal cases. There are three possible weaknesses in that provision.

First, Section 301 may contravene the Covenant's provisions on judicial authority and judicial review. As the former head of the Marianas Political Status Commission, you may recall that federal court access was one of the basic goals sought by Micronesians from the beginning of new

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status negotiations. In fulfillment of that goal, Article IV of the Covenant provides for a federal court to decide federal cases as well as local cases to the extent permitted by local law. Moreover, Covenant Section 903 makes it clear that the United States' commitments in the Covenant are enforceable in federal court. The Covenant thus reflects the intention to hold the United States accountable in federal court for alleged violations of the Covenant or of rights which Covenant secures.

The Trust Territory government's presence on Saipan may in fact be the "historical accident " which the draft bill's analysis portrays it to be. As a Covenant negotiator, you are certainly more knowledgeable than I about the duration or the extent to which that presence was foreseen. It is now clear that, for whatever reason, the Trust Territory government will remain on Saipan until the Trusteeship ends. As you are probably acutely aware, the Trusteeship lingers on without a termination date in sight. Thus, the present circumstances arguably constitute a situation uncontemplated by the framers of the Covenant. Therefore, it becomes critical to deal with the situation by respecting the Covenant's basic purposes.

The exercise of federal court jurisdiction over the Trust Territory is consistent with the purposes of both Article IV and Section 903. By its presence on Saipan, the Trust Territory government inevitably affects the lives of Northern Marianans. The Trust Territory government is not a conventional "federal agency" as that term is usually used. Yet, it undeniably is the United States "agency" through which the Secretary of Interior administers the Trust Territory under presidential delegation pursuant to 48 U.S.C. § 1681(a). It would appear to be inconsistent with the purposes of the Covenant sections above to exempt the Trust Territory government, an entity created and controlled by the United States, from the obligations, protections, and limitations which the Covenant imposes directly against the United States itself. This inconsistency is even more puzzling when one reads proposed section 302. That provision clearly preserves the reviewability of constitutional issues arising from acts of the Commonwealth government. Section 301 has no similar provision. The draft bill's sectional analysis noticeably omits a justification of why the constitutional rights of Northern Marianans are protected in federal court against action by the locally-elected Commonwealth government, but not against action by the United States-appointed Trust Territory government.

This point frames my second concern: the proposed bill may be unconstitutional. As noted above, the bill would withhold jurisdiction even over cases in which Northern Marianans allege the violation of their constitutional rights. In a democratic governmental system, the judiciary is the traditional expositor and protector of constitutional rights. A law purporting to completely eliminate such protection might not withstand constitutional scrutiny. I believe that Senator Weicker, the chairman of the committee which would review the draft bill, recently expressed this very concern when opposing S. 951, the Johnson-Helms Amendment to the Justice Department Authorization Act (the amendment attempts to restrict federal court power to order busing). Senator Weicker should be apprised of the similar possible constitutional infirmity in this proposed legislation.

Third, assuming that section 301 withstands constitutional scrutiny, it might inadvertently cause further procedural confusion and result in injustice. One unanswered question is whether this court could hear cases in which the Trust Territory appears as a plaintiff. In addition, in several cases on this court's docket, both the Commonwealth and private litigants have sued the Trust Territory through cross-claims and third-party complaints after the initiation of the action. What would be the draft bill's intended effect upon these actions? In present and future disputes, the Trust Territory government could well be a necessary party to the action within the meaning of Federal Rule of Civil Procedure 19. The parties' inability to join the Trust Territory would be unfair and inequitable to them. Moreover, the court would inevitably face innumerable difficult judgment calls as to whether it should retain jurisdiction of the case in the Trust Territory's absence. If the Trust Territory proved to be an indispensable party, the court would have to dismiss the entire action pursuant to Rule 19(b). It is equally predictable that the already-busy Ninth Circuit Court of Appeals would have to review and second-guess the trial court's conclusion on the Trust Territory's indispensability. Fundamental concepts of fairness and judicial efficiency require that the Trust Territory be as accountable as any other defendant present within the Northern Marianas.

Section 302

Section 302 would revise this court's appellate jurisdiction by restricting that jurisdiction to review of decisions by Commonwealth courts, and by foreclosing review of decisions by this court's local law trial jurisdiction. I have three reactions to this provision.

First, it may be inconsistent with Covenant Section 402(c). Section 402(c) guarantees that the Northern Mariana Islands may determine the nature and extent of this court's appellate jurisdiction. It would seem more congruent with 402(c) to give the local legislature the flexibility to permit appeals from decisions of this court's local law trial division, the jurisdiction of which the legislature also defines.

Second, Section 302 would lock litigants into a local law appellate process which is unnecessarily more costly than it is now. A good portion of local law litigation presently ends in our appellate division. Parties forego further appeal to the Ninth Circuit federal appellate court in San Francisco. Section 302 would force Northern Marianans and the Commonwealth government to incur great travel expense to prosecute appeals on purely local law matters. Given the low income levels in this jurisdiction, that would seem unduly burdensome. Moreover, it would be unwise to compel the overworked Ninth Circuit to hear many local law appeals which otherwise might terminate at a lower appellate level.

Third, if Section 302 is to become law, it should unequivocably confirm that the Ninth Circuit has jurisdiction to hear direct appeals from this court's local law trial division. The chain of appellate jurisdiction has proven confusing to everyone. For general reference, see Camacho v. Civil Service Commission, 666 F. 2d 1257, 1259-1262 (9th Cir. 1982), Taisacan v. Camacho, 660 F. 2d 411, 413 (9th Cir. 1981), and Sablan v. Santos, 634 F. 2d 1153 (9th Cir. 1980). The sectional analysis of 302 does not account for any of these decisions.

Thank you for giving me the opportunity to offer input as the draft bill approaches introduction and consideration. If you need further information or assistance, please feel free to contact me.

Sincerely,

ALFRED LAURETA
United States District Judge

AL:la

Commonwealth of the Northern Mariana Islands
Office of the Governor
Saipan, Mariana Islands 96950

FOR OFFICIAL USE
CABLE ADDRESS
GOV. NMI SAIPAN
REPLY TO:

DEPT. or ACTIVITY

MAY 17 1982

5/25

The Honorable Pedro A. Sanjuan
Assistant Secretary for Territorial
and International Affairs
U.S. Department of Interior
Interior Building
18th & C. Sts. NW
Washington, D.C. 20240

Dear Mr. Sanjuan:

RE: PROPOSED CHANGES TO THE JURISDICTION OF THE DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS

Thank you for giving us the opportunity to comment on the draft legislation which would amend the jurisdiction of the District Court for the Northern Mariana Islands. Our comments are as follows:

(1) We support that portion of Section 301(a) which provides that the District Court for the Northern Mariana Islands shall have jurisdiction of a District Court of the United States and, effective April 1, 1984, that of a Bankruptcy Court of the United States.

(2) We feel, however, that the District Court for the Northern Mariana Islands should be given jurisdiction over the Government of the Trust Territory of the Pacific Islands, its agencies, and instrumentalities. The High Court has ruled that it has no judicial authority in the Commonwealth of the Northern Mariana Islands. If the High Court lacks jurisdiction, which court does have jurisdiction? We submit that the District Court is the only court which can logically assume jurisdiction over cases involving the Trust Territory of the Pacific Islands and support the District Court's decision in the case of Sablan Construction Co. v. Government of the Trust Territory of the Pacific Islands, 526 F. Supp. 135 (DNMI, App. Div. 1981). Decisions of the High Court cannot be appealed to Federal

The Honorable Pedro A. Sanjuan
Page Two
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Courts. We feel that actions against the Trust Territory of the Pacific Islands should be given meaningful review by the Ninth Circuit Court and the United States Supreme Court. It should be noted that there is no backlog of cases in the District Court for the Northern Mariana Islands. However, litigants are experiencing considerable delays in obtaining decisions in both the Trial and Appellate Divisions of the High Court.

(3) We support that portion of the draft which provides that the Appellate Division of the District Court for the Northern Mariana Islands has no appellate jurisdiction over decisions of the District Court for the Northern Mariana Islands.

Again, thank you for the opportunity to provide our comments.

Sincerely,

Pedro A Tenorio

PEDRO A. TENORIO
Acting Governor

cc: The Honorable Edward DLG. Pangelinan
Northern Marianas/Washington Representative

Commonwealth Court
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ROBERT A HEFNER
CHIEF JUDGE
SAIPAN, MARIANA ISLANDS 96950

May 10, 1982

Honorable Edward DLG. Pangelinan
CNMI Representative to the
United States
Suite 700
1016 Sixteenth Street, N.W.
Washington, D. C. 20036

Dear Mr. Pangelinan:

This is to follow up on my previous letter to you and our phone conversation.

After the initial proposed amendment was sent to you, there has been input from various sources and I have attempted to include some of the suggestions made in the proposed amendment enclosed herewith.

Time has not provided for a draft that we are all satisfied with, but I believe the enclosed fairly well sets forth the intent and purpose.

The basic advantages of the proposed changes are to: (1) solve the problem of what to do with a lingering High Court; (2) provide an existing court with an increased workload; (3) solve the present jurisdictional disputes; (4) save considerable expense and duplication of effort; (5) improve the judicial administration of Trust Territory matters and, (6) provide a way to have judgments paid off against the Trust Territory Government.

The benefactors of the above include the U.S. taxpayer, the Government of the Trust Territory, and the CNMI and certainly the litigants and public who use the court systems.

As indicated on the phone, I will be in California from May 18, 1982 to June 9, 1982 and can be reached at (714) 487-1482 should the need arise.

Your assistance in forwarding the suggestions made to the Department of Interior and Senator Weicker is appreciated.

Sincerely yours,

Robert A Hefner

Enclosures:

PROPOSED AMENDMENT

Section 301. Section 2(a) of the Act of November 8, 1977 (91 Stat. 1266, 48 U.S.C. 1694a(a)) is amended to read as follows:

"(a) The District Court for the Northern Mariana Islands shall have the jurisdiction of a district court of the United States, and, effective April 1, 1984, that of a bankruptcy court of the United States. It shall also have jurisdiction over all cases brought against the Government of the Trust Territory of the Pacific Islands, its agencies and instrumentalities, and its officers or employees with respect to their acts and omissions colorably related to their official duties"

Section 302. There is hereby added the following sentence at the end of Section 2(b) of the Act of November 8, 1977 (91 Stat. 1266; 48 USC 1694a(b)):

"It shall also have jurisdiction over all cases brought against the Government of the Trust Territory of the Pacific Islands, its agencies and instrumentalities, and its officers or employees with respect to their acts and omissions colorably related to their official duties."

Section 303. The Act of November 8, 1977 (91 Stat. 1266; 48 U.S 1694a(b)) is amended by adding to it a new section (c):

"(c). In addition thereto, there is hereby established a separate division in the District Court of the Northern Mariana Islands which shall be designated as the 'Trust Territory Division.'

This Division shall have jurisdiction over all matters originating in the Federated States of Micronesia, Republic of Palau, and Republic of the Marshall Islands and which would otherwise be filed in and disposed of by the High Court of the Trust Territory of the Pacific Islands. Matters filed in or transferred into this Division shall be processed and disposed of as set forth herein.

The presiding judge of the District Court shall be the presiding judge of the Division and shall be assisted by temporary judges. The temporary judges shall be those appointed pursuant to Section 1(b)(2) of this Act. In addition thereto appointments of temporary judges may be made in the same manner as specified in Section 1(b)(2) from the judges of courts of record of the Federated States of Micronesia, Republic of Palau, or Republic of the Marshall Islands who are licensed attorneys in good standing. Trial matters in the Trust Territory Division shall be heard and disposed of according to the rules, procedures, and laws relating to the Trial Division of the High Court of the Trust Territory of the Pacific Islands. Appeals from trial matters in the Trust Territory Division shall be heard and disposed of according to the rules, procedures, and laws relating to the Appellate Division of the High Court of the Trust Territory of the Pacific Islands. The court rules of the Trust Territory Division may be modified as needed by the presiding judge of the District Court.

Any trial or appellate matters pending in the High Court of the Trust Territory of the Pacific Islands on the effective date of this Act shall be transferred to the Trust Territory Division of the District Court for disposition except for those matters which the presiding judge of the District Court deems it best to have disposed of by the High Court; provided however, that those matters which will be transferred from the High Court to the respective court systems of the Federated States of Micronesia, Republic of Palau, and Republic of the Marshall Islands pursuant to Department of Interior Secretarial Order 3039 shall not be so transferred but shall be processed according to the terms of said Secretarial Order.

All matters disposed of in the High Court shall be transferred to the Trust Territory Division of the district court for post judgment relief, enforcement, or other proceedings as may be required under the circumstances.

Any judgments rendered against the Trust Territory Government shall be paid from such funds as may be appropriated by the Congress of the United States for that purpose.

Upon the final disposition of the Trust Territory Division matters and the termination of the United Nations Trusteeship for the Trust Territory of the Pacific Islands (entered into force July 18, 1947, 61 Stat. 3301), the Trust Territory Division shall cease to exist."

Existing Section 302 would be renumbered 304. No change is offered for this section or for Title IV.

Analysis and Support
of
PROPOSED AMENDMENT

The District Court for the Northern Mariana Islands was established in 1977 and is presently fully staffed and operational.

The High Court has been in existence for over 30 years and until about 1965 the manning level consisted of one justice most of the time. There are presently two - three justices.

Past High Court statistics reveal that 41-42% of all Trust Territory High Court cases were filed in the Mariana Islands District. After these cases were removed from the High Court by disposition or assumption by the new courts in the Northern Mariana Islands, the High Court continued to handle the cases in Palau, Marshalls, and Federated States.

As of last December, the Palau Supreme Court was certified pursuant to Department of Interior Secretarial Order 3039 and all High Court cases were transferred to that court except for 13 - 17 cases filed against the Trust Territory Government. Those cases are now pending before the High Court.

As of February or March, 1982, the Marshall Islands court was certified and most of the High Court cases have been or will be transferred to that new court shortly.

Some of the High Court cases pending in the Federated States of Micronesia have been transferred to the Supreme Court of the Federated States of Micronesia.

According to the Trust Territory High Court, there are about 35 appeal cases and 350 trial cases pending in the High Court. Of the 350 trial cases, it is estimated that about one-third can or will be transferred to the courts of the Federated States of Micronesia and Marshall Islands pursuant to Department of Interior Secretarial Order 3039. Of the balance, approximately 170 are cases against the Trust Territory Government according to the Trust Territory Attorney General. Of these 170 only half appear to be viable cases demanding judicial action.

It is anticipated that shortly the only cases left to be filed in the Trust Territory High Court are those cases filed against the Trust Territory Government and by way of writ of certiorari pursuant to Department of Interior Secretarial Order 3039.

The thrust of the proposed amendment is two-fold. First, to have the U. S. Congress clarify the status of the Trust Territory Government in so far as litigation is concerned and, second, to save the expense and duplication of judicial systems.

Presently there are several Trust Territory Government cases the District Court for the Northern Mariana Islands has assumed jurisdiction over against the opposition of the Trust Territory Government. The proposed amendment would put to rest this dispute and specifically grant jurisdiction to the District Court for the Northern Mariana Islands. The amendment makes it clear in sections 301 and 302 that this jurisdiction extends to not only Northern Mariana Islands cases but also cases originating in the Federated States of Micronesia (FSM), Republic of Palau (ROP), and the Marshall Islands Republic (MarRep).

In Section 303, a separate Trust Territory Division is established to supplant and replace the High Court of the Trust Territory as quickly as is consistent with efficient judicial administration. In order to effect a smooth transition cases filed or transferred into the Division would continue to be controlled by the laws and procedures of the Trust Territory.

All pending High Court trial matters would be subject to being transferred into this Division except: (1) cases which have already been transferred to the national or state courts of the FSM, the Supreme Court of the ROP, or the High Court of MarRep; (2) cases which are contemplated and are within the scope of Department of Interior Secretarial Order 3039; (3) cases which the judge of the District Court deems best be disposed of by the High Court. These may be cases where most, if not all, of the proceedings have been accomplished or where a particular High Court Justice has unique knowledge about the case.

All pending High Court appeal cases will be transferred to the Trust Territory Division except those which the judge of the District Court deems best be decided by the existing panel of the High Court Justices if the matter has been taken under advisement.

Pursuant to Secretarial Order 3039, decisions by the courts of last resort of the FSM, ROP, and MarRep are subject to review by the Appellate Division of the High Court. These matters would be processed and determined in the Trust Territory Division.

Except for those matters in which the judge of the District Court may be disqualified, etc., he shall be the trial judge and determine the matter or may assign a temporary judge appointed pursuant to the provisions of 48 USC 1694b(2). Added to the pool for appointment as temporary judges are the lawyer-judges from FSM, ROP, and MarRep, (presently totally five).

This same pool of judges would form appellate panels of three judges to hear appeals from trial matters as well as to decide whether a writ of certiorari should issue pursuant to Secretarial Order 3039.

In order to not disrupt the orderly proceedings of matters transferred to the Trust Territory Division, it shall be bound to follow the existing Trust Territory High Court trial and appellate rules of procedure and laws of the Trust Territory -just as if the case was continuing in the Trust Territory High Court. The judge of the District Court does retain the authority to modify the rules should the need arise.

On the effective date of the Act, the trial cases that will be transferred to the District Court will probably be limited to those cases against the Trust Territory Government and any Writ of Certiorari application pursuant to Secretarial Order 3039. It is anticipated that most of the 35 or so appeal cases will be transferred as most cases have either been under advisement for extended periods of time and need to be re-submitted or have not yet been taken under advisement.

In addition, all High Court cases previously decided and which require post judgment proceedings such as orders in aid of judgment, revocation of probation in a criminal cases, etc., would be transferred.

Transfer of cases can be done simply by a blanket order listing the numbers and/or a general order relating to all previously decided and disposed cases.

Case files would remain in the custody of the various clerks in the courts throughout the Trust Territory.

It is envisioned that some travel to the various courts will be necessary to hear pending matters and post judgment proceedings. This should decrease over a period of time.

Upon the termination of the Trusteeship Agreement and final disposition of the matters, the Trust Territory Division will go out of existence.

The District Court for the Northern Mariana Islands has the staff, personnel, and expertise as well as the capability of assuming the matters involved herein without an adverse effect on the other matters it hears.

Two of the clerks in the District Court office worked in the High Court system for several years and have experience in Trust Territory rules and procedures.

The judge of the District Court has sat on High Court matters as a temporary judge designated by the Secretary of Interior.

The anticipated cost savings by phasing out the High Court will be as follows:

FY-82 High Court Budget

U. S. employees of High Court .... (includes judges, 1 reporter, 1-2 secretaries)	302,500
Micronesian employees, at Headquarters .... (includes 2 clerks, 1 reporter)	42,000
Recruitment and repatriation (U.S.)..............	22,500
" " " (Micro.)	1,200
Personnel Benefits	43,000
Travel, etc.	29,000
	$440,200

Housing used by High Court Personnel

6 houses at 4,000/yr. housing allowance..........	24,000
1 apartment at 3,000/yr. housing allowance	3,600
	$467,800

The above figures were obtained from the High Court with the exception of the housing allowance figures. These are amounts (averaged) the CNMI Government pays to its employees who cannot be given government housing when none is available. At present, the CNMI does not have any available government housing. If the High Court is phased out, it is assumed that six houses and one apartment would become available for CNMI use.

From the above savings, there would be deducted the cost of travel of the District Court to the various parts of the Trust Territory to complete the cases filed in the Trust Territory Division. In any event, it appears that a savings in excess of $400,000 per year to the U. S. taxpayers would result.

Commonwealth Court
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ROBERT A. HEFNER
CHIEF JUDGE
SAIPAN, MARIANA ISLANDS 96950

May 3, 1982

Honorable Edward DLG. Pangelinan
CNMI Representative to the
United States
Suite 700
1016 Sixteenth Street, N.W.
Washington, D. C. 20036

Dear Mr. Pangelinan:

Pursuant to your request for comments on the Department of Interior proposed changes to 48 USC 1694, I herewith submit the following:

1. The main purposes of the amendment to 1694(a) are fairly well set forth in the analysis attached to the draft and the provisions for the inclusion of bankruptcy jurisdiction and having the District Court come within 28 US. §1331 are supported.

In respect to the jurisdiction of the District Court over the Trust Territory Government, I would like to make some comments in an effort to perhaps change the thinking in this regard.

While I was still on the High Court bench in 1978, I heard a case brought by the Mariana Islands Airport Authority (MIAA) against the Trust Territory Government. The Trust Territory Attorney General's Office filed a motion stating, in effect, that the High Court no longer had jurisdiction over cases filed in the Marianas against the Trust Territory. This unique and unprecedented position was based on the argument that after the effective date of the Constitution of the Commonwealth, the High Court no longer had any jurisdiction to hear cases in the Mariana Islands.

I denied the motion and found that the High Court did indeed have jurisdiction. Subsequently, plaintiff's counsel dismissed the action for reasons unknown.

Shortly thereafter a new case was filed by MIAA against the Trust Territory in the District Court and the Trust Territory again filed a motion to dismiss on jurisdictional grounds. Assigned United States District Judge Francis Whelan found that the District Court did have jurisdiction over the Trust Territory notwithstanding my prior decision.

This case set the precedent for the District Court to assume jurisdiction over the Trust Territory, which precedent has been followed in the cases referred to in the analysis to the draft bill.

I understand that recently the Supreme Court of the Federated States of Micronesia has held that it has jurisdiction over the Trust Territory Government and I suspect that the proposed amendment is a reaction to the number of courts now claiming jurisdiction over the Trust Territory and I can appreciate the concern of the Trust Territory Government.

This matter was recently raised in hearings before the Senate of the Northern Mariana Islands. Presently a bill is pending to transfer all "local" cases to the Commonwealth Trial Court commencing next January. Concern was expressed as to what this would do to the case load and continued existence of the District Court. It was suggested that the United States Congress be asked to vest jurisdiction of all High Court matters in the District Court. This would accomplish two major goals:

a. Increase the caseload of the District Court to assure as much as possible the continued existence and presence of the District Court in the Northern Mariana Islands.

b. It would save money in two respects. First it would utilize the existing facilities of the District Court which is fully staffed and operational. Its permanent location is convenient to the central Trust Territory Government and the Trust Territory Attorney General's Office which would be involved in the litigation. Second, it would eliminate the expense of continuing to support the High Court for the number of years it will take to terminate the Trusteeship

Agreement. It is a fact that most of the Palau and Marshall cases have been transferred to their respective court systems. Many of the Federated States of Micronesia cases are now in the Supreme Court of the Federated States of Micronesia. The present caseload of the High Court does not appear to require 3, 2 or even 1 full-time judge.

Shortly, the only basis for the existence of the High Court will be to hear cases on writ of certiorari from the courts of Micronesia pursuant to Secretarial Order 3039 and for cases against the Trust Territory Government. Past experience leads me to believe these will be small in number and could be handled easily by the District Court.

To accomplish the above goals, I have attached a proposed amendment for the consideration of the Department of Interior.

It should be noted that this change should be reflected in the Compact of Free Association, §174 so that the District Court of the Northern Mariana Islands is encompassed in §174(b)(1).

However, should it be the decision not to grant jurisdiction of High Court matters to the District Court, then I feel that additional wording must be added to §301 to clarify the status of those Trust Territory Government cases decided or pending in the District Court.

2. In reference to the amendment to 48 USC 1694(b), if the law is changed to vest jurisdiction of all local cases in the Commonwealth Trial Court next January, the concerns raised in the analysis will be largely moot. I have no objection to the proposed wording in Section 302.

Sincerely yours,

Robert A. Hefner

Attachment:

PROPOSED AMENDMENT

Section 301. Section 2(a) of the Act of November 8, 1977 (91 Stat. 1266, 48 U.S.C. 1694(a)) and Section 402(a) of Article IV of the Act of March 24, 1976, (Public Law 94-241, 90 Stat. 263) is amended to read as follows:

"(a) The District Court for the Northern Mariana Islands shall have the jurisdiction of a district court of the United States, and, effective April 1, 1984, that of a bankruptcy court of the United States.

In addition thereto, there is hereby established a separate division in the District Court of the Northern Mariana Islands which shall be designated as the 'Trust Territory Division.'

This Division shall have jurisdiction over all matters originating in the Trust Territory of the Pacific Islands and which would otherwise be filed in and disposed of by the High Court of the Trust Territory of the Pacific Islands. Matters filed in or transferred into this Division shall be processed and disposed of as set forth herein.

The presiding judge of the District Court shall be the chief judge of the Division and shall be assisted by temporary judges appointed by the Secretary of the Interior as the need arises. Trial matters shall be heard and disposed of according to the rules, procedures, and laws relating to the Trial Division of the High Court of the Trust Territory of the Pacific Islands. Appeals from trial matters shall be heard and disposed of according to the rules, procedures, and laws relating to the Appellate Division of the High Court of the Trust Territory of the Pacific Islands. Said court rules may be modified as needed by the presiding judge of the District Court.

Any trial or appellate matters pending in the High Court of the Trust Territory of the Pacific Islands on the effective date of this Act shall be transferred to the Trust Territory Division of the District Court for disposition except for those matters which the presiding judge of the District Court deems it best to have disposed of by the High Court.

All matters disposed of in the High Court shall be transferred to the Trust Territory Division of the District Court for post judgment relief, enforcement or other proceedings as may be required under the circumstances.

Upon the final disposition of the Trust Territory matters and the termination of the United Nations Trusteeship for the Trust Territory, the Trust Territory Division shall cease to exist."

The **Chairman.** Thank you very much. I appreciate your statement.

Before proceeding to the questions, I wonder, I think perhaps it would be helpful for us to hear also from Mr. James Joseph, Chairman, the Northern Mariana Islands Commission on Federal Laws, and then I can address questions to you both. If you will remain seated, I will ask Mr. Joseph to come forward, who is accompaned by Daniel MacMeekin.

Mr. **Joseph.** Thank you very much, Mr. Chairman. I am James Joseph, Chairman of the Northern Mariana Islands Commission on Federal Law.

With me on my right is Daniel MacMeekin who is Executive Director of the Commission.

We have submitted a written statement for the record. I just will make a couple of additional comments.

The **Chairman.** Your statement will be made part of the record in full, and the interim report will be made a part of the committee file.

STATEMENT OF JAMES A. JOSEPH, CHAIRMAN, NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS, WASHINGTON, D.C.

Mr. **Joseph.** As an official representing the Commission of the Northern Mariana Islands, I would like to testify in support of S. 2088, S. 2089, and S. 2090. We have recommended these bills for enactment as a result of considerable deliberation by the Commission.

We submitted drafts of our recommendations to the officials of the Northern Mariana Island government, to other officials within the Northern Mariana Islands, and to individual citizens as well.

In January of 1982, we submitted an interim report which details our rationale for these recommendations, and I would like to request that that interim report be included as part of the record for this hearing.

Let me just make one additional comment, Mr. Chairman. The Northern Mariana Island Commission on Federal Laws was created pursuant to section 504 of the Covenant To Establish a Commonwealth of Northern Mariana Islands in Political Union with the United States of America.

The purpose of the Commission is to survey the laws of the United States and to make recommendations to the U.S. Congress as to which laws of the United States should be applicable to the Commonwealth of the Northern Mariana Islands.

There are seven members of the Commission. Four of them are residents of the Northern Mariana Islands. It also includes, in addition to the distinguished representative, Mr. Pangelinan, the distinguished Congressman from the State of California, Phillip Burton.

Mr. Chairman, we recommend S. 2088, S. 2089, and S. 2090 because we feel that they represent action which would be good for the United States, good for the people of the Northern Marianas, and clearly within the intent of the Congress in approving the Northern Marianas covenant.

Thank you very much, and I will be pleased to respond to questions, and let me introduce again Daniel MacMeekin, the Executive Director of the Commission.

[The prepared statement of Mr. Joseph follows:]

STATEMENT OF

JAMES A. JOSEPH

CHAIR

NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

I am pleased to testify in support of S.2088, S.2089, and S.2090. Each of these is a bill recommended for enactment by the Northern Mariana Islands Commission on Federal Laws in its January 1982 interim report to the Congress. The Commission set forth its rationale for each of the recommended bills in the body of that report and also suggested the language now incorporated in S.2088, S.2089, and S.2090. We have previously provided copies of our interim report to the members of this Committee and we have additional copies here today. You may wish to include the report as part of the record for this hearing.

The Northern Mariana Islands Commission on Federal Laws was created, pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241, 48 U.S.C. section 1681 note) "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner." The seven members of the Commission were appointed in 1980. In addition to myself, they are Mr. Pedro A. Tenorio, the Vice Chair of the Commission, who is now Lieutenant Governor of the Northern Mariana Islands; the Honorable Phillip Burton, of the U.S. House of Representatives; Mr. Jesus C. Borja, a private attorney practicing in the Northern Mariana Islands; Ms. Agnes Manglona McPhetres, Assistant Superintendent of the Northern Mariana Islands Department of Education; Mr. Edward DLG. Pangelinan, the Representative to the United States for the Commonwealth of the Northern Mariana Islands; and Mr. Myron Thompson, a trustee of the Kamehameha Schools in Honolulu. In compliance with the authorizing language of the Covenant, four of the members--Mr. Tenorio, Mr. Borja, Ms. McPhetres, and Mr. Pangelinan--are citizens of the Trust Territory of the Pacific Islands domiciled in the Northern Mariana Islands. Our executive director is Mr. Daniel H. MacMeekin.

In preparing its interim report, the Commission was mindful of its duty to "take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of [the] Covenant." Drafts of each of the recommendations contained in this report were widely circulated among officials of the Government of the Northern Mariana Islands, other public officials and concerned private individuals, firms, and organizations in the Northern Mariana Islands, agencies of the Federal Government concerned with the subject-matter of the recommendation, and other interested persons. Numerous comments, criticisms, and suggestions from these sources were of great value in preparing this report.

Section 504 of the Covenant charges the Commission with making "such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status." In this interim report, the Commission made three recommendations to Congress. S.2088, if enacted, would implement the Commission's recommendation that citizens of the Northern Mariana Islands be treated as citizens of the United States prior to termination of the trusteeship for purposes of a variety of federal statutes. S.2089 would implement the Commission's recommendation that the present applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands be clarified and affirmed. S.2090 would implement the Commission's recommendation that the Northern Mariana Islands be excluded from provisions of the Clean Air Act governing motor vehicle emission and fuel standards and that the Administrator of the Environmental Protection Agency be required to waive application to the Northern Mariana Islands of any other requirement of the Clean Air Act on a finding by the Governor of the Northern Mariana Islands that the benefits of compliance with that requirement in the Northern Mariana Islands are significantly outweighed by the costs of compliance. The Commission believes enactment of these bills will facilitate the transition of the Northern Mariana Islands to its new Commonwealth status, and urges their approval by the Senate Committee on Energy and Natural Resources and by the Congress.

The CHAIRMAN. Thank you very much. Mr. MacMeekin, your statement, too, will be made a part of the record in full. I would invite you to summarize briefly.

STATEMENT OF DANIEL H. MacMEEKIN, EXECUTIVE DIRECTOR, NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Mr. MACMEEKIN. Thank you, Mr. Chairman. Let me comment briefly on the three bills in turn.

S. 2088, the so-called citizenship bill, does not grant full citizenship to the citizens of the Northern Mariana Islands. I want to make that clear because some people have suggested that it does.

The Marianas approved the covenant in 1975. This Congress approved it in 1976, and a key provision of that covenant was that the citizens of the Northern Mariana Islands would become U.S. citizens on termination of the trusteeship. Well, as we know, there is some uncertainty as to when the trusteeship will terminate. I don't think there is any official date before anybody right now. There is a certain amount of impatience in the Northern Mariana Islands.

The CHAIRMAN. There is a certain amount of impatience here.

Mr. PANGELINAN. Thank you.

Mr. MACMEEKIN. The Commission did consider the alternative of legislation to grant full citizenship to the Mariana Islands people now. Because there seems to be a prevailing theory that a grant of citizenship amounts to an assertion of sovereignty over the Northern Mariana Islands and thus might be seen in the United Nations as a de facto annexation before termination of the trusteeship, the Commission decided instead to go on this statute-by-statute approach, picking out statutes which really are of concern to the people of the Marianas and culling out quite a few other statutes which are of much less concern at the moment, ones for which there is no real problem with waiting until the end of the trusteeship.

The Congress clearly has the power, both in its power in enacting legislation of any sort and in the powers granted under article 3 of the trusteeship agreement, to make particular legislation available to the people of the Northern Mariana Islands. Theoretically, I suppose, Congress could even make legislation available to citizens of Canada, West Germany, whatever. That is within the scope of the congressional powers. It does not amount to making the people of the Marianas citizens at this point, citizens of the United States.

The major areas that S. 2088 deals with, Mr. Pangelinan has already recited. Of particular concern right now is the desire of the Marianas people, already admitted by virtue of Public Law 96-351, to enlist in the armed services, to become officers in the armed services. Right now they can enlist. They cannot become officers.

As aliens, citizens of the Northern Marianas cannot work for the Federal Government in the United States. They can work for the Federal Government in the Marianas, but there they are not entitled to the employment benefits, life insurance, health insurance and so forth, that Federal employees in the United States are entitled to.

Protection services overseas: The United States now provides this sort of service in a very generalized fashion to the residents of the Northern Mariana Islands because they are citizens of the trust territory. All citizens of the trust territory get this generalized diplomatic protection by the United States. S. 2088 would give the citizens of the Northern Mariana Islands specific statutory protections that citizens of the United States get overseas.

We have another group of statutes which have to do with commerce. Among these are eligibility for agricultural loans and fishery loans, the ability to get ocean thermal energy conversion licenses, and quite a few other provisions.

Another set of statutes has to do with political and civil rights. The protection of the civil rights laws which now are confined only to U.S. citizens would also be extended to citizens of the Northern Mariana Islands.

Finally, citizens of the Northern Mariana Islands would be made eligible to participate in a wide variety of Federal programs and benefits which are limited to U.S. citizens at the present time.

S. 2089, would make the Federal Tort Claims Act clearly applicable to claims arising in the Northern Mariana Islands. There is an ambiguity in the law now which we explained in the report. I won't comment on that further except to note that section 204 of H.R. 5139 as it passed the House Thursday evening does contain S. 2089 in its entirety.

Finally, S. 2090 has to do with the Clean Air Act. The Clean Air Act, of course, was enacted to protect public health, to prevent air pollution here in the United States. It is perhaps a classic example of legislation designed for the United States that is really not quite suited for these isolated tropical islands.

The requirement that is most pressing out there has to deal with the use of unleaded gasoline in automobiles. It requires the importation of automobiles that cost more. It requires gasoline dealers to have storage tanks and the ability to dispense unleaded gasoline, and to very little real benefit since the nearest inhabited areas are, as Mr. Won Pat pointed out, quite distant from the Northern Mariana Islands. The trade winds tend to disperse any emissions from the small number of automobiles there quite rapidly.

We have proposed that the act in general remain applicable so that nobody would get the idea that the Northern Mariana Islands is a place under the U.S. flag where they can come and pollute freely, but we have included a provision which would allow waiver of particular requirements of the Clean Air Act if, like the unleaded gasoline requirement, they become too burdensome locally with no compensating benefit, on the request of the Governor of the Northern Mariana Islands.

That is basically the rationale behind the three bills.

We would be pleased to answer any questions that the Committee may have on them.

[The prepared statement of Mr. MacMeekin follows:]

STATEMENT OF

DANIEL H. MACMEEKIN

EXECUTIVE DIRECTOR

NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Thank you for the opportunity to testify on S.2088, S. 2089, and S.2090. I will address each bill in turn.

S.2088

The people of the Northern Mariana Islands in 1975 approved by a wide margin the Covenant that links the Northern Mariana Islands permanently with the United States. A key provision of that Covenant is section 301, granting United States citizenship to citizens of the Northern Mariana Islands on termination of the United Nations trusteeship under which the Northern Mariana Islands is presently administered by the United States. The promise of United States citizenship was an important inducement to establishing the commonwealth arrangement. It is now 1982, seven years after approval of the Covenant and six years after its approval by Congress, but the people of the Northern Mariana Islands--through no fault of their own--are not yet citizens of the United States. Termination of the trusteeship awaits resolution of the future political status of other parts of the Trust Territory, and approval of those arrangements by Congress and by the United Nations. We are aware of no announced target date for termination of the trusteeship at the present time. Until that date, citizens of the Northern Mariana Islands can be denied rights, privileges, and immunities that, by federal law, are conditioned on United States citizenship.

S.2088, however, does not accelerate the grant of United States citizenship to citizens of the Northern Mariana Islands. Indeed, it does not grant United States citizenship at all. Were it possible and politic to grant full United States citizenship to citizens of the Northern Mariana Islands now, the Commission, I am sure, would unanimously support that course of action. Such a grant of United States citizenship prior to termination of the trusteeship, however, is seen by some as inconsistent with the present trusteeship status of the Northern Mariana Islands, under which the United States does not assert sovereignty over the Trust Territory.

Rather, S.2088 is drafted on the premise that Congress, under Article 3 of the Trusteeship Agreement, has the indisputable power to apply to the Northern Mariana Islands "such of the laws of the United States as it may deem appropriate to local conditions and requirements." Accordingly, Congress may specify that, for purposes of a particular statute or statutes, citizens of the Northern Mariana Islands are to be treated as though they are citizens of the United States. Legislation of this sort is not a grant of full and immediate United States citizenship by Congress. It is not a declaration of United States sovereignty over the Northern Mariana Islands. It is not an amendment of the Covenant's provisions on citizenship. It is, however, at least a partial remedy for the frustration felt by the people of the Northern Mariana Islands because of the delay in termination of the trusteeship.

S.2088 provides that citizens of the Northern Mariana Islands are to be treated as though they were citizens of the United States for purposes of a fairly long list of statutes. That list of statutes by no means includes all federal statutes discriminating on the basis of citizenship; many statutes were omitted because the likelihood of adverse effect on an individual citizen of the Northern Mariana Islands was thought to be very small.

The statutes included in the bill are those known to affect particular citizens of the Northern Mariana Islands or thought reasonably likely to affect citizens of the Northern Mariana Islands in the relatively near future. The population of the Northern Mariana Islands is small when compared with that of the United States. For this reason, relatively few persons will be affected by the inclusion or omission of any particular federal statute from S.2088. But a larger number are likely to be affected by at least one of the various statutes listed. Those persons adversely affected are likely to feel aggrieved. Removal of these citizenship barriers removes the potential for grievances at virtually no cost to the United States.

S.2088 authorizes treatment of citizens of the Northern Mariana Islands as citizens of the United States for purposes of six categories of federal statute, relating to (1) the uniformed services; (2) federal employment; (3) protection and services in foreign countries; (4) commerce; (5) political and civil rights; and (6) federal programs and benefits. Thumbnail descriptions of each of the statutes enumerated in S.2088 are found at pages 7 to 41 of the interim report. Another section of S.2088 ensures that citizens of the Northern Mariana Islands will be treated as citizens of the United States for purposes of United States citizenship requirements in any statute applicable to the Northern Mariana Islands by its own terms or by operation of the Covenant. At pages 42 to 47 of the interim report are examples of statutes applicable to the Northern Mariana Islands but conferring benefits only on United States citizens.

Congress has already enacted Public Law 96-351, to allow citizens of the Northern Mariana Islands to be treated as citizens of the United States eligible to enlist in the Armed Forces of the United States. Three separate presidential proclamations have suspended particular United States citizenship requirements in specific federal statutes (under the authority granted by Congress in section 1004(a) of the Covenant). S.2088 similarly would suspend United States citizenship requirements for citizens of the Northern Mariana Islands in a number of other statutes and, thereby, relieve the need for individual citizens of the Northern Mariana Islands to petition Congress or the President on a statute-by-statute basis when adversely affected by a United States citizenship requirement in one of these statutes.

As a consequence, enactment of S.2088 would not only remove citizenship barriers for citizens of the Northern Mariana Islands; it would also conserve the time of Congress and the Executive Branch by addressing statutes comprehensively rather than piecemeal. Enactment of S.2088 would also reaffirm the permanent political union between the United States and the Northern Mariana Islands to come into full force on termination of the trusteeship.

S.2089

The Federal Tort Claims Act allows actions for money damages against the United States "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission" of any federal employee "while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant. . . ." Without the Federal Tort Claims Act, a person injured by, for example, a negligently-driven United States Government vehicle, could not file a court action for damages against the United States, but could recover from the United States only through a private bill enacted by Congress.

The present applicability of the Federal Tort Claims Act to claims arising in the Northern Mariana Islands is not certain. Sound legal arguments exist on both sides of the issue. (Arguments for and against the Act's applicability to claims arising in the Northern Mariana Islands may be found at pages 48 to 50 of the Commission's interim report.) Enactment of S.2089 would resolve the issue in favor of applicability.

S.2090

The Clean Air Act is, perhaps, a classic example of a federal law that should be modified in its application to the Northern Mariana Islands. The Act, which seeks to protect public health by preventing or controlling air pollution, is now much less beneficial in the Northern Mariana Islands than in other areas of the United States. The Northern Mariana Islands, with fewer than 20,000 inhabitants and fewer than 10,000 motor vehicles, with virtually no industrial sources of air pollution, and separated by great ocean distances from other inhabited areas, simply has less need for clean air legislation than other areas. At the same time, the Clean Air Act imposes, particularly in its unleaded gasoline requirements, substantial costs to the people of the Northern Mariana Islands. (Those costs are outlined on pages 56 to 59 of the Commission's interim report.)

Tourism is a principal industry of the Northern Mariana Islands and tourism, of course, is dependent on an unpolluted environment. Exemption of the Northern Mariana Islands from all of the Clean Air Act could attract polluting industries from other areas where standards are more stringent. Accordingly, the Commission did not recommend that the Clean Air Act be made completely inapplicable to the Northern Mariana Islands. Rather, the Commission recommended exemption only from those provisions of the Act governing motor vehicle emission and fuel standards. The Commission recognized, however, that other situations might arise in the future where a particular Clean Air Act requirement would prove unduly burdensome to the Northern Mariana Islands. The Commission's recommendation includes provision for exemption from such a requirement by the Administrator of the Environmental Protection Agency on a finding by the Governor of the Northern Mariana Islands that the benefits of compliance with that requirement are significantly outweighed by the costs of compliance. The power to determine whether the Northern Mariana Islands should be exempted from a particular requirement of the Act is lodged in the Governor of the Northern Mariana Islands as the official most familiar with the special characteristics of the Northern Mariana Islands and best able to act on a request for exemption with concern for all interests involved and with reasonable dispatch.

The applicability of the Clean Air Act to the Northern Mariana Islands has been the subject of much contention in the Northern Mariana Islands for several years. Enactment of S.2090 will resolve that controversy to the satisfaction of most, if not all, of those concerned.

* * *

Each of these bills, S.2088, S.2089, and S.2090, will strengthen the relationship between the United States and its new Commonwealth, the Northern Mariana Islands. S.2088, allowing citizens of the Northern Mariana Islands to be treated as citizens of the United States for purposes of particular federal statutes, will increase opportunities and eliminate frustrations for individual citizens of the Northern Mariana Islands and provide a visible milepost to the people of the Northern Mariana Islands on their road to full United States citizenship. S.2089, ensuring the Federal Tort Claims Act's applicability to claims arising in the Northern Mariana Islands, will clarify the present uncertainty as to the Act's applicability and allow valid tort claims against the United States arising in the Northern Mariana Islands to be reduced to money damages. S.2090, modifying the applicability of the Clean Air Act to the Northern Mariana Islands, will resolve a controversy of several years' standing and demonstrate the willingness of the United States to adjust federal statutes, when circumstances so dictate, to meet the needs of this small group of Pacific islands that is to become the newest member of the American political family.

Thank you.

The CHAIRMAN. Thank you very much. I appreciate the testimony of all three of you gentlemen. I have just a very few questions at this time.

Concern has been raised that S. 2088 may be inconsistent with the responsibility of the United States under the trusteeship agreement and could be considered as a back door annexation.

How do you respond to that comment?

Mr. JOSEPH. Mr. Chairman, to some degree Mr. MacMeekin spoke to that, but let me reiterate that when the Commission considered its recommendation, it deliberately decided not to recommend the granting of citizenship as an act prior to the termination of the trusteeship.

What we have decided to recommend is that in certain areas and in accordance with certain sections of laws, that they be treated as citizens of the United States, and it is in those areas in which we think it will be particularly beneficial to the people of the Northern Mariana Islands and also beneficial to the United States that we have made that recommendation.

We do not think that this violates in any way the trusteeship agreement with the United Nations.

The CHAIRMAN. And you are not afraid at that issue being raised? Do you think the benefits of the legislation outweigh whatever criticism may attend it?

Mr. JOSEPH. We have sought to minimize the criticism, Mr. Chairman. Given the past performances in the trusteeship council and the United Nations, we suspect an issue of this sort could be raised, but we have taken all the precautions we thought were necessary to minimize the impact of anyone raising that issue.

The CHAIRMAN. Would you like to comment?

Mr. PANGELINAN. Yes, Mr. Chairman. I think that the Northern Marianas intends to prepare a brief for presentation before the United Nations which will rationalize the tenor of this particular bill.

As you know, Mr. Chairman, many benefits now are accruing to the people of the Northern Marianas under the covenant, and the benefits that you are now considering under S. 2088 are certainly not very far from that responsibility. I might add the trusteeship agreement is where the U.N. charter required the United States to strengthen the political, socioeconomic benefits of the islands of the trust territories as well as the Northern Marianas, so really I see no concern.

I have been up to the United Nations on many occasions, and it is regrettable that our association in the United Nations with the Soviet Union is always raised for some unrealistic matters, points, that do not really touch upon the substances of the issue, but we are ready to present to the United Nations a brief.

The CHAIRMAN. It has been suggested that rather than use the comprehensive approach expressed in S. 2088, that we respond on a case-by-case basis.

How would you react to the case-by-case rather than the comprehensive approach?

Mr. PANGELINAN. Mr. Chairman, it will take us the next 100 years if we have to present a case-by-case basis. The comprehensive approach will address the matter right to the point. I think it is a most realistic approach that the Commission has recommended, and also the government of the Northern Marianas supports it with enthusiasm.

The CHAIRMAN. The Department of Justice has indicated that S. 2089 is not necessary since they feel the Federal Tort Claims Act does apply to the Northern Marianas, and consequently the issue would not arise. Obviously the Commission has a different feeling. I wonder if you would explain why?

Mr. MACMEEKIN. The Commission recognizes that there is ambiguity in the present law now. There are fairly sound legal arguments on both sides of the issue. The Justice position, if that is Justice's position, is one that I would agree with personally.

However, it does not foreclose two possibilities. One is that sovereign immunity, the sort of thing that this is directed at, is something that a court would take notice of on its own. A court can decide it does not have jurisdiction over a Federal Tort Claims Act case, and the parties are really powerless to overrule the court, regardless of their own inclinations.

Second, the present position of the Department of Justice might not extend into a future administration, and finally, there is no cost to this particular measure. It can be enacted and there is really no cost to it.

The CHAIRMAN. I have no further questions at this time. I appreciate your testimony and your appearance here today. We will try to respond to the concerns you have raised.

I might just parenthetically note what I hope is an illustrative statement, that it might take you 100 years on a case-by-case basis, I hope we have the trusteeship question resolved by that time.

Mr. PANGELINAN. So do I, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you. Our next witness is Mr. Ilon. You may proceed.

STATEMENT OF EPEL ILON, LIAISON OFFICER, MICRONESIAN WASHINGTON OFFICE

Mr. ILON. Thank you, Mr. Chairman, for this opportunity to present the views of my government on Senate bill 2633 which proposes to transfer the audit authority and related staff of the offices of the government comptrollers for Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa, to the Office of the Inspector General of the Department of the Interior.

I am happy to report that my government is in support of the proposed transfer, and I request that President Tosiwo Nakayama's telegram to you, Mr. Chairman, in which he elaborates on the FSM's views on the bill, be inserted in the record of this hearing.

The CHAIRMAN. It will be inserted following your statement.

Mr. ILON. We welcome the involvement of the Secretary of the Interior and the U.S. Congress in the audit review and followup processes.

The FSM government also supports the three requirements that the territorial executive, chief executives, should submit comprehensive annual financial reports and that audit of these reports be independent and that followup actions be taken concerning that audit and the certification process.

I must state it here that my government will not be in a position to support the financial requirement and so would look to your support when the need does arise.

While the FSM government supports the passage of S. 2633, we must point out the need to address as soon as possible the need for a new financial management system which must be responsive to the new State and Federal governments set up under the constitution of the Federated States of Micronesia.

As this committee may have been told, our books under the old system were inauditable and it is this legacy that we in the Federated States of Micronesia would like to see changed. We hope that in your deliberations on S. 2633 you will consider this necessary prerequisite. Otherwise our books will continue to be inauditable.

That concludes my prepared statement, Mr. Chairman.

[The prepared statement of Mr. Ilon and telegram follow:]

TESTIMONY OF
EPEL K. ILON, LIAISON OFFICER
MICRONESIAN WASHINGTON OFFICE
OF THE
FEDERATED STATES OF MICRONESIA
ON S.2633
BEFORE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SEPTEMBER 13, 1982

Thank you, Mr. Chairman, for this opportunity to present the views of my government on S.2633, which proposes to transfer the audit authority and related staff of the offices of the government comptrollers for Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands and American Samoa to the Office of Inspector General of the Department of the Interior.

I am happy to report that my government is in support of the proposed transfer and I request that President Tosiwo Nakayama's telegram to you, Mr. Chairman, which elaborates on the FSM's views on the bill, be inserted in the records of this hearing.

We welcome the involvement of the Secretary of the Interior and the U.S. Congress in the audit review and follow-up processes. The FSM Government also supports the three requirements that the territorial chief executives should submit comprehensive annual financial reports and that audit of these reports be independent and that follow-up actions be taken.

While the FSM Government supports the passage of S.2633, we must point out the need to address as soon possible the need for a new Financial Management System, which must be responsive to the new State and Federal governments set-up under the Constitution of the Federated States of Micronesia. As this Committee may have been told, our books under the old system were "inauditable" and it is this legacy that we in the Federated States are trying to change. We hope that in your deliberations on S.2633, you will consider this necessary prerequisite, otherwise our books will continue to be "inauditable".

Thank you for this opportunity to comment on S.2633.

TEXT OF CABLE SENT BY PRESIDENT TOSIWO NAKAYAMA TO CHAIRMAN MCCLURE.

I thank you for the opportunity to comment on S.2633 as it relates to the Federated States of Micronesia. The FSM Government supports the provisions of the bill that transfer to the DOI Inspector General's Office Territorial audit responsibilities that are currently assigned to the U.S. Comptrollers. The increased impartiality, involvement of the Secretary of Interior and access of the U.S. Congress to audit results and follow-ups that the bill envisages should have a disciplining effect on financial management in the Territories. The FSM Government also supports the three requirements: that the Territorial executives should submit comprehensive annual financial reports, that there be an independent audit of these reports, and that there be follow-up on actions taken as a result of recommendations by Federal auditors. It is our judgement that these requirements will have a disciplining effect and will spur the improvement of financial accountability in the FSM. However, salutary effects on government accountability will not occur if comprehensive and accurate, annual financial reports cannot be generated in FSM's existing financial management system. OTIA is now discussing with FSM their initial plans for replacing the current financial management system with a new system, to include locally placed computers, financial software, systems design and accounting training by qualified consultants. At this early stage of planning, and with funding sources undetermined, it is not clear whether the new financial management system will be in place by the time the three requirements regarding annual financial reports and follow-up become effective.

Thus, while we support the provisions of the bill requiring the FSM to submit annual financial reports, have them independently audited and follow-up on recommendations, we also request the U.S. to develop a comprehensive and coherent financial management system in the FSM.

Finally, the FSM Government agrees with the provisions of the bill that require the FSM President (and other executives) to submit the annual financial reports, rather than the TTPI High Commissioner, as is stated in Chapter Four of the related GAO report dated March 25, 1982. This shift in responsibility to the consitutional governments is consistent with avowed U.S. policy. Again, thank you for the opportunity to comment.

The CHAIRMAN. Thank you very much. I appreciate the support that you have expressed and the President has expressed for this legislation.

I am also very much aware of the two suggestions that you made—first of all, the need for an infrastructure support, and second, the need for financial support with respect to the audit. We will try to keep that in mind as we pass the appropriations.

Thank you very much.

Mr. ILON. Thank you.

The CHAIRMAN. I think it is worthy of note in that connection that the supplemental appropriation bill which has just passed, I think has $2½ million that is earmarked for the purpose of infrastructure support, so Congress is acting and I hope will continue to act.

Mr. George Egan, the GAO. Mr. Egan, your entire statement together with the detailed analysis will be made a part of the record. I would invite you to summarize.

STATEMENT OF GEORGE L. EGAN, ASSOCIATE DIRECTOR, ACCOUNTING AND FINANCIAL MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE: ACCOMPANIED BY CHARLES W. CULKIN, JR., PROJECT MANAGER, FAR EAST BRANCH, HONOLULU, HAWAII; AND RICHARD N. RUPRECHT, OFFICE OF THE GENERAL COUNSEL

Mr. EGAN. Thank you very much, Mr. Chairman. To begin with, I want to introduce my two colleagues with me today—Mr. Charles Culkin of our Honolulu office who supervised the entire audit covered by our report, and Mr. Dick Ruprecht, our Office of General Counsel who has been of valuable assistance in drafting the legislation.

I have a summary statement prepared, but let me just summarize my summary in the interest of time.

I think it is important for us to make two points about S. 2633 which we think are important and which are covered by our audit report entitled, "The Federal Audit Function in the Territories Should Be Strengthened." We would be happy to submit a copy of the report for the record if you so desire.

First the audit authority and resources of the U.S. Government Comptrollers in the territories would be transferred to the Office of the Inspector General, Department of the Interior.

Second the Governors of American Samoa, Guam, the Northern Marianas, and the Virgin Islands, as well as the chief executives of the Marshall Islands, Federated States of Micronesia, and Palau, will be required to: One, prepare, publish, and submit a comprehensive annual financial report; two, arrange for an independent audit of the comprehensive annual financial report; and three, submit to the Congress, the Secretary of the Interior and cognizant Federal auditors a written statement of the actions taken on Federal audit recommendations within 60 days after the issuance of the report.

We believe these changes are essential to strengthen the financial management controls over Federal moneys provided to the territories. We think these two recommendations are covered very adequately in S. 2633, and we will be glad to respond to any questions, and my colleagues are here to assist with the answers.

[The prepared statement of Mr. Egan follows:]

STATEMENT OF

GEORGE L. EGAN, ASSOCIATE DIRECTOR
ACCOUNTING AND FINANCIAL MANAGEMENT DIVISION
UNITED STATES GENERAL ACCOUNTING OFFICE

INTRODUCTION

Mr. Chairman, we are here today at your request to comment on S. 2633. With me is Mr. Charles W. Culkin, Jr., Project Manager from our Far East Branch in Honolulu, Hawaii, and Mr. Richard N. Ruprecht, of our Office of General Counsel, who assisted in drafting the legislation.

My testimony today will summarize the major recommendations in our March 25, 1982, report "The Federal Audit Function in the Territories Should Be Strengthened" (AFMD-82-23) and discuss how S. 2633 would accomplish them. You may wish to include our report as part of the record for this hearing.

BACKGROUND

Our report recommended, among other things, that the audit functions of the U.S. Government Comptrollers in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands be transferred from the Department of the Interior's Office of the Assistant Secretary for Territorial and International Affairs (OTIA) to the Office of the Inspector General, and that certain responsibilities, notably the preparation of an annual financial report, be transferred to the local territorial governments.

S. 2633 would accomplish these recommendations with the following:

-- The audit authority and resources of the U.S. Government Comptrollers for the territories would be transferred from OTIA to the Office of the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight in the territories. Incident to this transfer, some functions which are no longer deemed appropriate are omitted. The territorial organic acts and other legislation which heretofore provided for the Government Comptrollers are amended to reflect the transfer.

-- The Governor of American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands, and the chief executives of the Marshall Islands, the Federated States of Micronesia, and Palau would be required to (1) prepare, publish, and submit a comprehensive annual financial report; (2) arrange for an independent audit of the comprehensive annual financial report; and (3) submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken on Federal audit recommendations within 60 days after the issuance of the audit report.

We believe these changes are essential to strengthen financial management over Federal monies provided to the territories. As discussed in our report, the territories have had longstanding problems in their financial management systems. Because of these problems and the substantial amounts of Federal financial assistance provided to the territories, continued Federal audit oversight is needed; however, it should to be made more independent and effective. More Federal technical assistance, and the assumption of increased responsibility by the territories for financial management, would further improve audit effectiveness. Accordingly, we strongly urge enactment of S. 2633.

I would now like to briefly mention some of the specific problems addressed by the bill.

TRANSFERRING THE AUDIT AUTHORITY AND STAFF OF THE COMPTROLLERS IN ORDER TO ACHIEVE INDEPENDENCE

In our report we recommended that Congress enact legislation to transfer the U.S. Government Comptrollers' audit authority and staff from OTIA to the Office of the Inspector General, Department of the Interior, for the purpose of establishing an independent organization which will maintain a satisfactory level of audit oversight in the territories. This recommendation is based on our finding that the independence of the Comptrollers currently is impaired by actual and perceived conflicts of interest arising out of their organizational alignment within the Department, out of personal relationships, and from external sources.

The Comptrollers are not organizationally independent because they do not report to the highest possible level within the

Department of the Interior and they are not located outside the line management function under audit. Although the organic acts, other laws, and a Secretarial Order place the Comptrollers under the general supervision of the Secretary of the Interior, they report to the Deputy Assistant Secretary of the Interior (Operations), Office of Territorial and International Affairs (OTIA), through a Director, U. S. Government Comptrollers, who in turn reports to the Assistant Secretary of the Interior, OTIA. The effect of this is that OTIA has line management responsibility as well as audit responsibility for territorial matters. Our report points out situations that indicate the Comptrollers' independence has been impaired by their organizational position within OTIA.

Second, we stated in the report that personal impairments, such as the establishment of close personal relationships between auditors and territorial officials and the auditing of programs by the same individuals who provide technical assistance on these programs, may have affected the Comptrollers' ability to work and to report findings impartially.

Third, we noted that the Comptrollers' independence has been further impaired by external factors including restricted access to records and information, limited staff resources, and delayed territorial government responses to audit reports.

We believe transferring the Comptrollers' audit function from OTIA to the Office of the Inspector General would eliminate some of the impairments to the Comptrollers' independence. In addition, we believe the audit function would be enhanced under the Inspector

General. As part of a professional audit organization, the audit function would receive the professional level of technical guidance and direction required to effectively carry out an audit operation. The Inspector General would be able to provide the necessary oversight, review, and assistance in developing comprehensive audit plans; following up on audit findings and recommendations; ensuring compliance with audit standards; determining audit staff resources; providing audit staff training programs; developing audit staff rotation programs; and recruiting qualified audit staff.

We also believe that under such a transfer some of the personal impairments would be eliminated while others could be substantially reduced. Most importantly, auditors would no longer have to audit territorial programs and operations on which they had provided technical assistance, because program operating responsibilities are prohibited under the Inspector General Act [5 U.S.C. App. § 9 (Supp. III, 1979)]. In addition, close relationships with territorial officials could be substantially reduced by having the Inspector General institute a program of rotating auditors periodically. Such a program would enable the audit staff to broaden their professional auditing experience and training.

Finally, we believe most external impairments to audit independence would also be eliminated if the Comptrollers' audit function were transferred to the Inspector General.

We noted in our report that two of the three Comptrollers and Interior's Inspector General concurred with our position that the audit function would be more independent and effective if it were under the Inspector General. Our position is further supported by the President's Transition Team report on OTIA, which also recommended that the Comptrollers' audit function be transferred to the Inspector General.

Part(b) of section 1, 2, and 3 of S. 2633 implements the recommended transfer by amending the relevant organic acts and public laws relating to Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to eliminate the existing provisions for the government comptroller and insert three new sections defining the authority to be conferred upon the Inspector General, Department of the Interior. The new language provides that a satisfactory level of audit oversight independent of the local government and the Office of Territorial and International Affairs be maintained in the territories, but it allows the Inspector General discretion in making audits and reports. The language is designed to prevent the Inspector General from completely diverting the audit resources transferred herein but stops short of specifying staffing levels and audit frequency. It is stated that the authority granted by this language shall extend to all activities of the government and shall supplement and not diminish the existing authority conferred upon the Inspector General by the Inspector General Act of 1978. In order to carry out these provisions, the new language also provides for the transfer of personnel and funds from the Offices of the Government Comptrollers to that of the Inspector General, Department of the Interior. Section 4 of S. 2633 would give the

Inspector General the same authority over American Samoa, effectively superseding the Secretarial Order under which the Office of the Government Comptroller for American Samoa is currently administered.

A second measure aimed at enhancing the independence of the Comptrollers is to relieve them of the legal obligation to provide reports at the request of the territorial Governors and High Commissioner. As presently written, the applicable laws could compromise the independence of the Comptrollers by creating the appearance that they are under the authority of the territorial Governors and High Commissioner, particularly if they require the Comptrollers to report on politically sensitive issues. S. 2633 would delete this statutory requirement.

We do not believe that any express provision is needed to allow territorial officials to suggest potential audit areas.

PREPARING ANNUAL FINANCIAL REPORTS AND CONDUCTING AUDITS THEREOF

Two other recommendations contained in our report were to require the local territorial governments to (1) prepare, publish, and submit a comprehensive annual financial report in conformance with standards of the National Council of Governmental Accounting within 120 days of the close of the fiscal year to the Secretary of the Interior and the Congress, and (2) arrange for an independent audit of the comprehensive annual financial report in conformance with generally accepted government auditing standards for governmental units.

The first of these recommendations was based on our finding that a large portion of the limited audit resources available is devoted to preparing a legislatively mandated "annual report of the fiscal condition of the government." We found that the nature and purpose of the report is ill-defined and its production is not timely. It is, therefore, of little value to users.

Currently, the Comptrollers report annually on their "review" of the territorial governments' financial statements. However, these reviews consist principally of inquiries of territorial officials and analytical procedures applied to financial data. The scope of this review, however, is much narrower than that required for an "examination" conducted in accordance with generally accepted government auditing standards, the objective of which is to express an opinion on the financial statements taken as a whole. An examination includes such steps as a review of internal controls and tests of financial transactions; however, the Comptrollers usually do not perform these audit steps, primarily because of inadequate recordkeeping by the territorial governments. As a result, they do not and cannot express an opinion on the financial statements presented in their annual reports.

Our second recommendation regarding the annual financial report is based on our belief that the audit of the report should also be the responsibility of the territorial governments, not the Comptrollers. Therefore, we have recommended that the annual report be audited by independent auditors, rather than being prepared and audited by the Comptrollers.

Part(a) of sections 1, 2, and 3 of S. 2633 would amend existing statutory provisions, and in the case of American Samoa enact new legislation, to require that local territorial governments prepare such reports and provide for such audits.

RESPONDING TO FEDERAL AUDIT RECOMMENDATIONS

Another recommendation contained in our report was that Congress require the territorial governments to submit to the cognizant Federal auditors, the Secretary of the Interior, and the Congress a written statement of actions taken on Federal audit recommendations within 60 days of the issuance date of the audit report.

While professional audit standards advocate establishing formal procedures to ensure consistent followup on audit report recommendations, the Comptrollers have not done this. The lack of a formalized system has led to infrequent report followup. Accordingly, the Comptrollers do not know whether territorial governments have implemented promised improvements.

The Comptrollers agreed that formalized audit followup systems should be developed. However, they stated that such systems would be more effective if the territorial governments were required to respond in writing to the audit recommendatons within a specified time frame. At present, only the Governor of American Samoa is required to respond in writing to audit findings and recommendations.

Part(a) of sections 1, 2, and 3 of S. 2633 would require the territorial governments to report on actions taken pursuant to any Federal audit recommendation within 60 days of the audit report issuance. We believe that such a requirement would help the Federal auditors and the territorial governments improve the economy and efficiency of territorial operations and ensure better accountability over Federal and local funds.

CONTINUING AUDIT OVERSIGHT UPON TERMINATION OF THE TRUSTEESHIP OF TTPI

Upon termination of the trusteeship agreement under which the United States has administered the Trust Territory of Pacific Islands, which includes the Northern Mariana Islands, the Comptroller will no longer have authority to conduct audits of those governments. In view of the substantial Federal assistance which the Northern Mariana Islands and the new governments of the Marshall Islands, the Federated States of Micronesia, and Palau will receive in future years and the serious financial management problems these governments are currently experiencing, we believe that a continued Federal audit presence is needed.

The Congress has already approved a covenant whereby the Northern Mariana Islands will become a U. S. territory and its people U. S. citizens (Public Law 94-241). The covenant will not become fully effective, however, until the trusteeship agreement is terminated. When the trusteeship ends and the covenant becomes effective, the United States will retain the authority to enact legislation affecting the territory. However, section 503(a)(3) of the covenant provides that certain existing U. S. laws will then become inapplicable. The law providing the Comptroller's audit authority in the Northern Mariana Islands (48 U.S. 1681b) is among those to terminate; and no provision has been made to continue Federal audit oversight in the territory.

S. 2633 addresses this problem by expressly providing that section 502(a)(3) of the covenant will not act to terminate the provisions relating to Federal audit oversight.

Mr. Chairman, this concludes my statement. We have a detailed analysis of the bill which we ask be accepted for the record. Also, we would like to call your attention two technical amendments to the bill, which is included in the detailed analysis provided to the Committee prior to this hearing. We will be pleased to answer any questions you or other members of the Subcommittee may have.

DETAILED ANALYSIS OF S. 2633

S. 2633 would implement the recommendations made to the Congress in our report, "The Federal Audit Function in the Territories Should Be Strengthened," AFMD-82-23, March 25, 1982. Essentially the legislation would effect the following:

--Transfer the audit authority and resources of the Government Comptrollers for Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, the Virgin Islands and American Samoa to the Office of Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight in the territories. Incident to this transfer, some functions which are no longer deemed appropriate are omitted. The territorial organic acts and other legislation which heretofore provided for the Government Comptrollers are also amended to reflect the transfer. While the Inspector General Act confers administrative authority on the heads of affected agencies to transfer functions and offices of their departments to the Office of Inspector General, the transfer recommended herein requires legislative action since certain existing statutory functions are to be eliminated (e.g., the requirement that the Government Comptrollers prepare annual reports of the fiscal condition of the territorial governments).

--Require the Governors of American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands, and the Presidents of the Marshall Islands, the Federated States of Micronesia, and Palau to (1) prepare, publish, and submit a comprehensive annual financial report; (2) arrange for an independent audit of the comprehensive annual financial report; and (3) submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken on Federal audit recommendations within 60 days after the issuance of the audit report. This is also accomplished by amending the organic acts and other legislation relating to the territories.

The following references to specific sections of the bill are intended to highlight significant changes.

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Section 1(a) amends the Organic Act of Guam to require the Governor to prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within 120 days after the close of the fiscal year. While the Government Comptroller currently is responsible for preparing the annual report, the recommended legislation will place this responsibility on the Governor. Furthermore, the Governor shall be responsible for arranging an independent audit of the comprehensive annual financial report in conformance with the standards prescribed by the Comptroller General of the United States. In addition, the Governor shall be required to submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken on Federal audit recommendations within 60 days after the issuance date of the audit report.

Section 1(b) amends the Organic Act of Guam to eliminate the existing provision for the Government Comptroller and inserts three new sections defining the authority to be conferred upon the Inspector General, Department of the Interior. The new language provides that a satisfactory level of audit oversight independent of the local government and the Office of Territorial and International Affairs, Department of the Interior, be maintained in Guam, but it allows the Inspector General discretion in making audits and reports. The language is designed to prevent the

Inspector General from completely diverting the audit resources transferred herein but stops short of specifying staffing levels and audit frequency. It is stated that the authority granted by this language shall extend to all activities of the government and shall supplement and not diminish the existing authority conferred upon the Inspector General by the Inspector General Act of 1978. In order to carry out these provisions, the new language also provides for the transfer of personnel and funds from the office of the Government Comptroller for Guam to that of the Inspector General, Department of the Interior.

Omitted from the existing statutory audit language is the authority to review and recommend adjudication of claims, deemed to be unnecessary by the current Government Comptrollers. This omission is not intended to diminish the broad authority of the Inspector General to have access to and inspect all records, including those relating to claims, under section 6 (a)(1) of the Inspector General Act.

Existing provisions for formal administrative and judicial review of the decisions of the Government Comptrollers are no longer deemed necessary since the Comptrollers do not have settlement authority and the audit functions transferred to the Inspector General do not include issuing formal decisions subject to appeal. The omission of these sections is not intended, however, to deprive a party of the right of access to an appropriate judicial forum should an action of the Inspector General so warrant.

Parts (a) and (b) of Sections 2 and 3 of the bill make similar amendments to the laws relating to the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands as do parts (a) and (b) of Section 1 just discussed. In addition, a provision has been added to ensure that section 502(a)(3) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States will not act to terminate the new language.

Sections 3 and 4 of the bill delete existing provisions regarding the salary and expenses of the Government Comptrollers since the statutory positions will be eliminated.

Section 4 would require that the Governor of American Samoa to prepare a comprehensive annual financial report; arrange for an independent audit of the annual report; and respond in writing to Federal audit reports recommendations, which is similar to the provisions of sections 1(a), 2(a), and 3(a) of the bill. Section 4 also defines the authority of and transfers resources to the Office of the Inspector General, Department of the Interior, relating to American Samoa as was done for Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands (Sections 1(b), 2(b), and 3(b)).

Section 4 supersedes the existing Department of the Interior Secretarial Order No. 3009 relating to the Government Comptroller for American Samoa.

TECHNICAL AMENDMENTS TO S. 2633

1. P. 6, line 13, insert after the phrase "and property pertaining to" the following:

> "the government of the Virgin Islands including those pertaining to"

2. Page 4, line 6, insert as new subsection (c) the following language and redesignate existing subsection (c) as subsection (d); page 7, line 1, insert as new subsection (c) the following language and redesignate existing subsection (c) as subsection (d); page 10, line 13, insert as new subsection (c) the following language and redesignate existing subsections (c) and (d) as subsections (d) and (e); and page 13, line 1, insert as new subsection (d) the following language and redesignate existing subsection (d) as subsection (e):

> "All departments, agencies, and establishments shall furnish to the Inspector General, Department of the Interior, such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require them; and said Inspector General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department, agency, or establishment."

The CHAIRMAN. Thank you very much. I appreciate your statement, and of course, appreciate the report that you have filed.

Does S. 2633 abolish the Offices of the U.S. Government Comptrollers in American Samoa, Guam, Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands?

Mr. EGAN. Yes; S. 2633 does abolish the statutorily mandated positions of the Comptrollers but it would not prevent the IG from administratively maintaining the positions. S. 2633 preserves and transfers to the IG the existing audit authority and the resources of the Comptrollers.

The CHAIRMAN. What assurances are there in S. 2633 that the auditors' positions in the Office of the U.S. Government Comptrollers will not be diverted to other IG areas?

Mr. EGAN. There are two points here, Mr. Chairman. Part (b) of sections 1, 2, and 3 of S. 2633 states that the purpose of the transfer is to establish an organization within the office of the IG which will maintain a satisfactory level of independent audit coverage in the territories. Although specific staffing levels and audit requirements are left up to the Inspector General's discretion, we believe that the stated purpose sufficiently expresses the Congress concern that territorial audit oversight be maintained by the IG.

Second assuming the IG's designated as the cognizant Federal audit agency under the single audit concept, as we recommended, it would be incumbent upon the IG to assure that the audits be done.

The CHAIRMAN. Have you been able to identify what costs would be incurred as a result of enacting the legislation?

Mr. EGAN. We don't know specifically what the initial cost will be. However, I think it is important to note that we are talking about accountability. We are talking about the problems that we have seen addressed in prior reports in terms of financial management systems, and it seems to me that we have got to pay that cost to get those systems in shape so we can make the annual financial reports meaningful, and then provide for the Inspector General to periodically audit and provide oversight for this function.

The CHAIRMAN. Even with the cost of money it is less than what it costs not to do it?

Mr. EGAN. We don't know what the cost would be right now, however, we believe we should pay the price to get those systems in shape so that the financial statements are meaningful and we have better accountability over Federal funds in the territories.

The CHAIRMAN. Under this legislation would the IG's mission be as broad as the current assignment of the Comptrollers?

Mr. EGAN. The current comptrollers are authorized to examine all the activities of the territorial governments, while the Inspector General, Department of Interior's mission is generally understood to extend to the programs and operations of the Department.

S. 2633 would expand the IG's authority by transferring the Comptrollers' broad audit authority regarding all territorial government accounts—Federal and local—to the Inspector General.

The CHAIRMAN. Do you believe that the U.S. Government Comptrollers should have access to tax return information regarding income taxes which are collected and retained by the territories?

Mr. **Egan**. If you wouldn't mind, Mr. Chairman, I would like to refer that question to Dick who understands those problems better than I do.

Mr. **Ruprecht**. Thank you. I would like to say that the work giving rise to this report and the legislation that we have submitted did not include an examination of the need of the Comptrollers for access to income tax returns. The legislation we submitted, therefore, does not expressly address the matter of access to return information.

However, since completing the assignment, we became aware of the results of an ongoing GAO audit which supports evidencing the need of the Comptrollers for access to this information. We believe it is essential for the Comptrollers to have access to tax return information in order for them to effectively audit and evaluate the operations of the agencies responsible for administering revenue collection activities in the territories. We do not believe that the access authority of the Comptrollers which would be transferred to the Inspector General's Office by S. 2633 is sufficiently clear to provide access to tax records. Accordingly, we would endorse inclusion of an access to tax records provision with adequate safeguards.

The safeguards are meant to insure the confidentiality of the information. We would be happy to assist the committee in drafting such a measure.

The **Chairman**. Do you believe the Comptrollers have the authority for that access now?

Mr. **Ruprecht**. It is not clear in the case of Guam, and we believe they do not have that express authority in the case of the Virgin Islands.

The **Chairman**. Do not have?

Mr. **Ruprecht**. No; not expressly.

The **Chairman**. Do you think they should have?

Mr. **Ruprecht**. Yes, we do.

The **Chairman**. How do we get around the apparent conflict or should we attempt, is there a reason to try to get around the apparent conflict between the confidentiality requirement of existing Federal law and the apparent application? I think it is an apparent application to at least the Virgin Islands, those Federal taxes collected there, and confidentiality is guaranteed under existing statute. Why are we going to treat the territories differently than we treat the rest of the country?

Mr. **Ruprecht**. I believe that there was meant to be an audit of the department administering the taxes in the territories as is provided for in the case of the States, but there is no express provision in the disclosure provision of the IRS Code for access by the U.S. Comptrollers to tax records.

The **Chairman**. We have confidentiality of every other agency of Government, every other unit of Government with respect to the payment of U.S. taxes, do we not?

Mr. **Ruprecht**. Yes; confidentiality is generally required.

The **Chairman**. We are suggesting that here in the territories we are going to do it differently?

Mr. **Ruprecht**. No; this would be similar to the access granted the Comptroller General in the case of audits of the IRS.

The CHAIRMAN. Well, the audit of the IRS is with respect to their administration of tax law.

Mr. RUPRECHT. That's right.

The CHAIRMAN. Are you suggesting that the access to tax return information that would be granted, if granted under 2633, would be identical to that of the law in other jurisdictions?

Mr. RUPRECHT. It would be similar to that currently provided the General Accounting Office for purposes of auditing IRS. Essentially it is proposed for purposes of allowing the auditors—the Inspector General—to assess the performance of the territorial revenue collectors.

The CHAIRMAN. S. 2633 provides that the territorial governor shall prepare, publish, and submit a comprehensive annual financial report in conformance with standards of the National Council on Government Accounting.

Why is it important that the governors adhere to these standards?

Mr. EGAN. Mr. Chairman, I think it is important in these days of accountability that we have standards by which we can measure performance of the financial management systems. We are seeing for the first time in a long time that the Congress, the White House, and OMB are going after accountability. We have also seen recently the Federal Managers Financial Integrity legislation which was sponsored by Senator Roth and by the minority Senator Eagleton as well as Chairman Brook and Frank Horton on the House side. This bill provides that the heads of Federal agencies annually certify as to the adequacy of their internal control systems.

It seems to us that here we have an opportunity to put these organizations on a sound basis regarding accounting principles, and also allows for measurement of the economic effectiveness of those organizations. The National Council of Government Accounting has been working a number of years to standardize accounting principles for governmental entities, and we believe the governors should take advantage of this effort.

The CHAIRMAN. Are you familiar with the concern raised by the Northern Mariana Islands in this regard?

Mr. EGAN. About the cost?

The CHAIRMAN. Yes.

Mr. EGAN. Not really; I have been hearing the discussion through this morning's session regarding the cost. It would seem to me that these costs at this point would appear to be minor in terms of what the benefits would be down the road.

Once we get the system in shape, the annual financial reports will provide meaningful data and allow us to measure the overall effectiveness of the territorial governments.

The CHAIRMAN. You have provided two technical amendments to the bill to the committee before this hearing. Would you explain those two technical amendments?

Mr. EGAN. I will let Mr. Ruprecht handle this.

Mr. RUPRECHT. The first amendment is necessitated by a typographical omission from the language in the submission that we made. Note that it was not corrected in the measure passed in the House last week, so we call your attention to it again.

The second has to do with the access to records authority of the Inspector General. It is our intent that the legislation transfer to the Inspector General the existing access authority of the Government Comptrollers. The provision that we are supplying would preclude any questions in this regard.

The CHAIRMAN. Thank you very much, gentlemen. I appreciate your attention to this matter, and the report that you have filed is very valuable to us. I appreciate the manner in which the investigation was conducted. The recommendations will be given serious consideration.

I appreciate your drafting assistance, and we will call upon you for further help.

Mr. EGAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Now we will hear from the administration witnesses headed, of course, by the Honorable Pedro Sanjuan, Assistant Secretary for Territorial and International Affairs, the Department of the Interior; the Inspector General, Mr. Mulberry; and the Director of the Office of Legislation, Environmental Protection Agency.

STATEMENT OF PEDRO SANJUAN, ASSISTANT SECRETARY FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY LARRY L. SIMMS, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE; AND MR. FRENCH, DEPARTMENT OF THE INTERIOR

Mr. SANJUAN. I have my special advisor, Mr. French, with me on my right.

I have submitted for the record, Mr. Chairman, my official remarks, and I would just like to make a few points that perhaps clarify some of the issues as they have been presented so far, and also might give you a different point of view on some of these matters.

With respect to the question of citizenship in the Northern Marianas, we are, quite sympathetic. It is very important that the issue of citizenship be resolved. I don't think we will be affected at the United Nations because we are not requesting outright citizenship. They would be treated as if they were citizens with regard to certain statutes. It would be as if they were citizens; it's no secret. The Covenant has been made public already. Everybody knows that the Northern Mariana Islands is going to be a commonwealth and its residents will have U.S. citizenship.

Also we are very well represented at the United Nations. I am sure that Ambassador Kirkpatrick, for whom I have the greatest admiration, will be able to take care of any objections that are raised there.

I am a naturalized American citizen, and I have been to the Northern Marianas, and I think a good deal of what is implied in American citizenship transcends the benefits that one might get in one fashion or another. There is that other element—wanting to be an American. This is something which I have always treasured myself, and I have never met a group of people whom I thought wanted to be Americans more than the citizens, the people in the

Northern Marianas. I really think that that is a very important spirit, and that spirit is there and it affected me very strongly when I was there.

As far as American Samoa is concerned, I think that we might also consider, perhaps in future legislation or in this legislation itself, the fact that the American Samoans are frequently kept from participating in some very worthy U.S. activities. If we are going to do this for the Northern Marianas, perhaps that issue might also be analyzed and might apply to American Samoa.

As far as the Guam Clean Air Act is concerned, one of the most important things in relation to that, I think, is the situation of the Guam Power Authority which basically, as far as I can see, is not going to be able to pay its way in the future unless some very, very drastic things are done to remedy the discrepency between the cost per kilowatt hour and the price that can be charged. If they keep on raising the charges, industrial and commercial and tourist development in Guam is going to be very seriously hindered. There are fewer users of electric power right now because of the rising charges, and these effluents travel over 1,500 miles of uninhabited ocean, and it doesn't make any sense to make what is a very important Clean Air Act provision apply to an area as sui generis as Guam.

Twenty to forty million dollars worth of scrubbers would really hurt the Guam Power Authority very, very badly.

On the question of the Samoan bonds, we think it is a very interesting and effective way of bringing about additional self-government in American Samoa, provided the Samoans approve and provided the interest is paid by the industrial enterprises that these bonds will fund.

Then finally, Mr. Chairman, with respect to the issue of the comptrollers, there are some points of clarification. When we talk about technical assistance, as the GAO has done, I think we are limiting ourselves perhaps to the concept of technical assistance that has to do with fiscal problems, such as auditing. I don't think that the technical assistance program that I have instituted in our office in large part pertains to that. We are dealing with the economic development problems that are much broader. There are two definitions of technical assistance. One falls in the fiscal category, and the other one deals with economic development matters. For the latter, you need economic development experts, and we are lining those up and are making rather considerable progress in that area.

I have been dealing with the Inspector General over the last few months. He is a friend of mine whom I respect, and we have already come to the conclusion that the transfer of the Comptrollers to the Inspector General is a desirable thing to do. I will not mince words. At the beginning of my stay at TIA I was not in favor of this, but I have begun to see a number of reasons why this should be effective.

One of them, which is important and missed most in these discussions, is the fact that—if you will permit me just to be vague for the purposes of propriety—in some cases comptrollers do become rather heavily involved in politics. They sometimes in their involvement in politics and with the legislature forget the need for objectivity in themselves as Comptrollers and in audits.

In my position as a political appointee, I have a very difficult time changing this, that is, making comptrollers objective, for the moment that I say they should be objective, it looks like political intervention on my part. This is, I think, one of the strongest reasons to suggest that there be a change to the Inspector General, who is not political, and who has a very objective viewpoint.

As far as the Federal tax records are concerned, I perhaps may differ from the Inspector General and others but I will also defer to his view. I do believe that the question of confidentiality is rather important and the worst part of it is that I think that an access to tax records by comptrollers will reduce measurably the degree of self-government of territories such as Guam and the Virgin Islands. I believe it is important to strengthen that during this administration and not to diminish or demean it.

Again, one would have to resolve things that I am not sure have been resolved. One question is whether or not the income tax in the territories is actually Federal or territorial. I think it is territorial. Why, then, would not U.S. citizens be subject to that type of investigation? Why would just the citizens of the territories? All of these matters are questions that arise in my mind. I am not terribly sure these are positions the Department would take with regard to access to income tax returns. They are just personal questions that I have.

That's all, Mr. Chairman. I don't have anything else. We are going to defer to the Department of Justice necessarily on 2088, even though I have dealt with it and to some degree on 2089, and on 2729, and to EPA on 2909. I did want to make a few comments that are corollary.

[The prepared statement of Mr. Sanjuan follows.]

STATEMENT OF PEDRO A. SANJUAN, ASSISTANT SECRETARY OF THE INTERIOR FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, REGARDING S. 2088, S. 2089, S. 2090, S. 2632, S. 2633, S. 2729, AND S. 2888, ON SEPTEMBER 13, 1982.

Mr. Chairman.

I am pleased to appear before the Committee this morning to present the views of the Department of the Interior on S. 2088 - a bill dealing with United States citizenship problems of the residents of the Northern Mariana Islands, S. 2089 - a bill that would make Federal tort claims provisions applicable to the Northern Mariana Islands, S. 2090 - a bill that would allow the exemption of the Northern Mariana Islands from provisions of the Clean Air Act, S. 2632 - a bill authorizing the American Samoa Government to issue industrial revenue bonds, S. 2633 - a bill to transfer the territorial government comptrollers to the Office of the Inspector General, S. 2729 - a bill to provide for an improved process of appellate review in the Virgin Islands and Guam, and S. 2888 - a bill requiring an annual Presidential report on the state of the insular areas, and providing or modifying authorizations for Guam, the Virgin Islands and Puerto Rico.

We have provided the Committee with a report on each of these bills, which outlines in detail the position of the Department. My testimony will highlight those positions.

S. 2088 - A bill dealing with United States citizenship problems of the residents of the Northern Mariana Islands

We defer to the Department of Justice on S. 2088.

S. 2089 - A bill that would make Federal tort claims provisions applicable to the Northern Mariana Islands

We defer to the Department of Justice on S. 2089.

S. 2090 - A bill that would allow the exemption of the Northern Mariana Islands from provisions of the Clean Air Act

The Department of the Interior defers to and concurs with the views of the Environmental Protection Agency with regard to S. 2090. The Guam Power Authority for many years has been confronted with Clean Air Act problems relating to emissions from the Cabras Island and Tanguisson plants. American Samoa and the Northern Mariana Islands are currently confronted with deadlines over auto emissions and the use of unleaded gas. We believe that S. 2090 should be broadened to cover all the territories, give more discretion to the Administrator of the Environmental Protection Agency, and specifically protect clean air act standards.

S. 2632 - A bill authorizing the American Samoa Government to issue industrial revenue bonds

S. 2632 would allow the American Samoa Government to issue industrial revenue bonds under conditions similar to those applicable to Puerto Rico. The Governor of American Samoa has endorsed the proposal.

At present section 103 of the Internal Revenue Code confers tax-exempt status on the interest paid on qualifying industrial revenue bonds. This statute applies to American Samoa. We note, however, that section 103 contains limitations, including the $1 million/$10 million limitation on capital expenditures and the prohibition against arbitrage.

We understand that American Samoa contemplates financing projects of a scope larger than would be allowed under the limitations of section 103. Enactment of S. 2632 would be necessary to accommodate the requirements of American Samoa. The Department of the Interior has no objection to the legislative approach contained in S. 2632, but recommends that the bill be amended as follows to make clear that the interest to be paid on the bonds or other obligations is derived solely from the revenues of the improvements or undertaking:

> In section 2(a), after the word "obligations,", insert the words "the principal and interest of which are".

S. 2633 - A bill to transfer the territorial government comptrollers to the Office of the Inspector General

(1) Strengthening Comptroller Performance

S. 2633 provides for a single comprehensive annual financial report by the chief executive of the respective territory within 120 days after the close of the fiscal year in lieu of two reports, i.e., the territorial chief executive's report to the Secretary of the Interior and the comptroller's annual report on the fiscal condition of each territorial government.

This change is consistent with the Department's goal of increasing self-government in the territories. Certainly, by freeing the territorial comptrollers from the annual reporting task, auditors would be able to devote more time to the performance of their primary task of focusing their audit efforts on specific problem areas. In addition, our report on H.R. 6859 contains recommended amendments that are intended to strengthen the audit function. We support these changes with our recommended amendments.

(2) Transfer of the Government Comptrollers

Existing laws and regulations place the territorial government comptrollers under the general supervision of the Secretary of the Interior. Within the Department, they are under the administrative jurisdiction of the Assistant Secretary for Territorial and International Affairs.

The Inspector General does not have the power to examine local revenues and expenditures of the territorial governments. If the comptrollers are to become an integral part of the overall Office of the Inspector General, then legislation similar to S. 2633 granting such authority, would be necessary. If, however, the comptrollers were to remain in the territories with merely a transfer to the administrative control of the Inspector General, existing law would permit such a transfer, without additional legislation.

From the perspective of the Office of Territorial and International Affairs, There are good reasons for transferring the comptrollers to the Inspector General. First, the comptrollers, at present, do not provide the Office of Territorial and International Affairs with information it would not be able to obtain through the Inspector General. Second, the comptrollers functions have often been politicized at the local level. If the comptrollers were under the Inspector General, we believe that it would be easier to deal with such political problems without having charges of "politics" being lodged against the Departmental officials.

The Department of the Interior has no objection to the enactment of S. 2633 if the bill contains the amendments recommended in our report on the bill.

S. 2729 - A bill to provide for an improved process of appellate review in the Virgin Islands and Guam

S. 2729 is identical to the June 25, 1982 drafting service provided to Senator Lowell P. Weicker, jointly by the Department of Justice and the Department of the Interior. That drafting service and this bill would (1) reform Federal judicial provisions applicable to the Virgin Islands and Guam to provide for an improved process of appellate review, (2) modify the jurisdiction of the Federal District court for the Northern Mariana Islands, and (3) repeal a number of provisions of Federal law applicable to the Virgin Islands that have been superseded by subsequent enactments, but never repealed.

In our report on S. 2729, we recommend an additional provision. Section 302 of S. 2729 excludes from the jurisdiction of the District Court for the Northern Mariana Islands (1) all matters concerning the government of the Trust Territory of the Pacific Islands, except certain specifically enumerated actions, and (2) acts or omissions of Trust Territory officers and employees colorably related to their official duties. Neither the drafting service nor S. 2729 places these excluded items under the jurisdiction of any other court. Under Northern Mariana Islands Public Law No. 3-14 the Commonwealth Trial Court has been given jurisdiction over many civil and criminal actions, and, on and after January 10, 1983, will be given jurisdiction over all civil and criminal actions arising under the laws of the Commonwealth of the Northern Mariana Islands. It is possible that some matters that would be excluded from District Court jurisdiction under section 302 could be interpreted as being susceptible to the jurisdiction of the Commonwealth Trial Court. In order to avoid confusion, we suggest that the High Court of the Trust Territory of the Pacific Islands be given jurisdiction over the matters in question. Our report on S. 2729 contains our recommendation for specific legislative language.

A House bill, H.R. 6859, deals with the same subject as S. 2729, but contains a number of changes which distinguish it from the original drafting service, and S. 2729. Those changes are outlined in our report on H.R. 6859, together with our recommendations on each provision so changed. We have sent a copy of our report on H.R. 6859 to your Committee.

S. 2888- A bill requiring an annual Presidential report on the state of the insular areas, and providing or modifying authorizations for Guam, the Virgin Islands and Puerto Rico

We oppose all provisions contained in S. 2888, except section 204, on which we defer to the Environmental Protection Agency.

(1) Title I

Title I would require an annual Presidential report on the insular areas. The Administration believes that it would not be appropriate for the President to send such a message to the Congress. Currently, the President is required to submit three items to the Congress: the State of the Union Address, the budget, and the economic report, each of which deals with or affects the territories in some form. Morever, S. 2888, if enacted, would require a single comprehensive annual financial report to be prepared, published and submitted by the chief executive of each territory within 120 days of the close of the fiscal year. Such a comprehensive report should and presumably would, include many of the items required to be submitted by the

President under S. 2888, thereby leading to a sizeable duplication of effort. One of the major efforts of this Administration has been to eliminate reporting requirements, where possible. Legislation on this subject has been forwarded to Congress. The Presidential report contemplated in S. 2888 would be inconsistent with this effort.

(2) Section 201

Section 201 would modify the authorization of the remaining $10 million earmarked for the Medical Center of the Marianas. We believe that Guam could use the remaining authorization by merely changing the name of the old Guam Memorial Hospital and making it a part of the Medical Center of the Marianas. New legislation then would be unnecessary.

(3) Section 202

Section 202 would authorize the appropriation of $40 million for water and power in the Virgin Islands. Federal budgetary constraints will not permit expenditure of $40 million at this time. If intended for 1983, it would be over budget. The Governor of the Virgin Islands has requested funding for water and power, which is being considered in our formulation of the 1984 budget. To authorize funding at this time would be premature.

It should be noted that water is subsidized in the Virgin Islands. If customers were properly charged for the water produced by the Virgin Islands Water and Power Authority, more funds would be available to finance the replacement and extension of water production and distribution facilities.

(4) Section 203

Section 203 would authorize the Secretary of the Interior to grant up to $3 million to the Government of the Virgin Islands for construction of one juvenile pre-trial detention facility on St. Thomas, and another on St. Croix.

Again, budgetary constraints will not permit support of section 203.

(5) Section 204

Section 204 deals with Federal water pollution control in Puerto Rico. We defer to the Environmental Protection Agency with regard to section 204.

We appreciate having had this opportunity to express the views of the Department of the Interior on these territorial issues.

The **CHAIRMAN**. Thank you very much. Before proceeding to our next witness, I would like to extend to the Department of the Interior and you, Mr. Secretary, a special thanks for a very unique event. Your statement and your report were here ahead of time. They got here Friday instead of this morning, and I appreciate that. That is an unusual event.

In spite of the rules of the committee and in spite of our effort to get the reports here ahead of time so we have a chance to look at them and analyze them before the hearing, it is the exception and not the rule, and I didn't want to pass the opportunity to say thank you. I appreciate it very much.

Mr. **SANJUAN**. We hope you won't have to thank us again in the future, I expect it to become routine.

The **CHAIRMAN**. If it becomes routine, we will be even more grateful.

Mr. **SANJUAN**. Thank you, sir.

The **CHAIRMAN**. Thank you very much. Did Mr. Simms have any individual statement to make at this point?

Mr. **SIMMS**. No, Mr. Chairman. I will be very happy to respond to any questions you have.

The **CHAIRMAN**. Mr. Mulberry?

STATEMENT OF HON. RICHARD MULBERRY, INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR

Mr. **MULBERRY**. Thank you, Mr. Chairman. You have my statement, and I do wish to support the Senate bill 2633. I think that it will expand the independence and objectivity of the audit function.

I also support the provision that requires the Governor or executive officer to provide a financial statement, and support the clause that requires him to engage the independent auditor which I think is important because of the impact that it makes on his financial responsibility and accountability.

I think one of the purposes and important reasons he should provide that annual statement is so he can better manage his financial house. I think that has been missed in some of this testimony. I think that is the most important facet of his having to prepare and furnish an annual financial statement.

I will be happy to answer any questions that the Chairman might have.

[The prepared statement of Mr. Mulberry follows:]

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20240

STATEMENT OF RICHARD MULBERRY
INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE ON PROPOSED LEGISLATION S. 2633, September 13, 1982

I am pleased to appear before you today in support of S. 2633.

I believe the new legislation will help a great deal to improve the overall financial accountability, auditing and technical assistance in the Territories. I will briefly explain why I think these three areas will be improved by passage of the bill.

FINANCIAL ACCOUNTABILITY

I fully support the requirements that the Governors and Chief Executives of the applicable governments be required to:

(1) Prepare, publish and submit a comprehensive annual financial report within 120 days after the close of the fiscal year.

(2) Arrange for an independent audit of the comprehensive annual financial report and,

(3) Submit to the Congress, the Secretary of the Interior and the cognizant Federal auditors a written statement of actions taken on Federal audit recommendations within 60 days after issuance of the audit report.

I think these new provisions will go a long way in compelling the governments to improve their overall systems of internal controls and financial management which has been the basic cause of problems for several years.

AUDITING

I believe that transferring the audit function to the Office of Inspector General (IG) will strengthen the overall audit activity. My conclusion is based on several factors including:

1. Independence and Audit Authority - The transfer is consistent with the Inspector General Act of 1978 (P. L. 96-452) (IG Act). It will afford the auditors more independence for identification, review and reporting of fraud, abuse and waste because of the authority and protection provided by the IG Act. The proposed legislation, as drafted, will expand IG authority and allow him to audit all accounts of the Territorial governments.

2. Audit Resources - I believe a permanent IG presence is needed in the Territories. In addition to current resources devoted to the Territories, I will have the capability of supplementing these resources on a temporary or permanent basis if deemed necessary based on overall priorities.

3. Professional Development - We can provide for increased professional development and promotional opportunities for auditors in the Territories since they will be part of a larger professional audit organization. These opportunities should enhance the overall recruiting effort to get top quality auditors to take an assignment in the Territories.

4. Federal Coordination - As the Federal cognizant agency, we can provide for better coordination among the other Inspectors' General to ensure development of better short and long term audit strategies for the various governments.

5. Subpoena Power - If necessary, we can and will use subpoena power to obtain records for audit.

6. Reporting - The reporting provisions of the IG Act will provide a more systematic and better vehicle for reporting problems and actions taken or not taken on problems.

Technical Assistance

I believe the transfer of the audit function to the Office of Inspector General will allow the Office of Territorial and International Affairs (TIA) to place more emphasis on technical assistance to the governments. TIA currently has two roles which are largely incompatible. The technical assistance role calls for them to help the governments in improving operations, while the audit role calls for them to evaluate and criticize the governments' performance including the operations for which technical assistance has been given. The GAO Report which prompted the introduction of S. 2633 identified numerous instances where these dual roles resulted in a compromise of audit independence.

I believe TIA's role should be that of a technical advisor. Although our audit reports usually recommend several ways to improve and help management, we are prohibited by the IG Act from having program operating responsibilities. Our role is clearly that of the professional critic. The clarification of roles provided by this bill will allow TIA to concentrate their talents on technical assistance which will strengthen their relationship with the Territorial governments and remove from TIA the responsibility of auditing its own effectiveness.

This concludes my statement, Mr. Chairman. I appreciate the opportunity to present my thoughts on the bill and will be happy to answer any questions.

The CHAIRMAN. Thank you very much. I appreciate your statement. We have one remaining witness, Mr. Modesitt.

STATEMENT OF LELAND E. MODESITT, JR., DIRECTOR, OFFICE OF LEGISLATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. MODESITT. Thank you, Mr. Chairman. Following everybody's example, I am going to summarize the summary of my summary, so to speak.

EPA has two comments to make. First is on S. 2090 to amend the application of the Clean Air Act to the Northern Marianas, and, second, on section 204 of your draft proposal. That is the section dealing with the Clean Water Act as it applies to Puerto Rico.

We have reviewed 2090 and we have comments and suggestions which we think will make the bill more effective. Basically, instead of dealing just with the Northern Marianas, we recommend a mechanism for the Northern Marianas as well as the Virgin Islands, American Samoa, and Guam, by which, on a continuing basis, the Administrator would have the authority to make exemptions for this sort of case. That suggested language is attached to my statement and we will be happy to work with committee on that.

Section 204 of your draft proposal deals with Puerto Rico. Even though similar language was included in the Omnibus Territories bill which passed the House last Thursday, frankly we are unable to support the amendment as it is now drafted because it doesn't really address Puerto Rico's immediate dilemma. Unless legislative action is taken in the next 2 weeks, Puerto Rico stands to lose approximately $30 million in unobligated Federal funds because of its inability to come up with local matching funds. Frankly, a Federal investment of roughly $180 million is going to be threatened because five major sewage treatment facilities cannot be made operational. We believe a solution can be developed to resolve Puerto Rico's situation, and with the committee's permission, in the next day or two we would like to submit draft legislation to accomplish the following.

First, to prevent the loss of that money and protect the Federal investment, and second, to provide a mechanism by which the agency will prefinance Puerto Rico's local share of the 1981 construction grant funds which they would otherwise lose, and third, to provide that this local share which is initially prepaid by the Federal Government would be prepaid under a plan worked out between the administration and the Commonwealth of Puerto Rico in the next couple of days.

We believe that this is an effective solution to their problem, and we would welcome the opportunity to work with the committee in implementing this approach. More details are outlined in my prepared statement, and I will be happy to answer any questions on that.

[The prepared statement of Mr. Modesitt follows:]

STATEMENT OF
LELAND E. MODESITT, JR.
DIRECTOR
OFFICE OF LEGISLATION
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

SEPTEMBER 13, 1982

Good morning, Mr. Chairman and members of the Committee. I am Leland E. Modesitt, Jr., Director, Office of Legislation of the U.S. Environmental Protection Agency. I welcome the opportunity to appear before you today to offer the views of the U.S. Environmental Protection Agency on S. 2090, a bill to amend the application of the Clean Air Act to the Northern Mariana Islands and on a draft proposal to amend the Clean Water Act as it applies to sewage treatment works for Puerto Rico.

Introduction

I would like to commend the Committee for taking the initiative in reviewing the status of the Northern Mariana Islands and the other territories under the Clean Air Act. Too often both critics and supporters of the Clean Air Act limit their focus to the fifty states and fail to assess territorial concerns. The current review of the Clean Air Act should allow us the opportunity to examine both new and recurring concerns the territories have. Likewise the Committee is to be commended for taking the initiative in developing legislation to address the concerns of Puerto Rico under the Clean Water Act.

On May 20, 1982, Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation of the Environmental Protection Agency, wrote to you, Mr. Chairman, concerning S. 2090 and offered the Agency's views on that bill as it related to the Northern Mariana Islands. A copy of that letter is attached to my statement for the record. Today I would like to expand upon that letter and offer specific suggestions on how we feel the bill should be drafted to provide other territories necessary relief.

The Northern Mariana Islands and American Samoa

Both the Northern Mariana Islands and American Samoa are experiencing difficulties with Title II of the Clean Air Act. This Title generally requires that new vehicles be equipped with emission control devices and be fueled with unleaded gasoline. Unleaded gasoline is the only widely available fuel which can be used successfully in combination with the catalytic converter. The use of varying amounts of leaded fuel by a catalyst-equipped motor vehicle will lead either to "fouling" or destruction of a catalyst.

While automotive emission controls and leaded fuel use restrictions have been required by the Congress to protect air quality and public health, in both American Samoa and the Northern Mariana Islands there is a strong desire for exemptions from current mobile source emission and fuel use requirements.

Advocates of such an exemption indicate that local auto buyers in the two territories could purchase Japanese vehicles without emission control devices and save a considerable amount of money. Furthermore, the location of the territories makes availability of unleaded gasoline a continuing supply or expense problem.

The Environmental Protection Agency has two major concerns about such an exemption. First, what would be the air quality impact? Second, what would occur if no exemption or opportunity for relief were granted?

Currently, the areas are in attainment of air quality standards for automotive-related pollutants, even though many vehicles in use in both territories are not in compliance with emission control requirements. Unique geographical conditions (location and prevailing winds) combine to cause adequate dispersion of emissions so that no violations result. Projections indicate that, even with such an exemption, the territories' future air quality status would be continued attainment. So continuation of the current requirements would not bring any environmental benefit to these territories.

We think that a better approach would be to amend the Act to allow this and similar situations to be reviewed for possible exemption rather than continuing with requirements which have no apparent benefit but which cause only unnecessary expense and citizen resentment. The approach we suggest would allow the Administrator of EPA to address this situation.

Guam

Guam is faced with a different type of problem under the Clean Air Act, involving operation of Guam Power Authority's Cabras Powerplant. The utility and EPA have been involved in continuing negotiations and litigation over the application of the Act's new source performance standard (NSPS) at the Cabras facility. At issue is what steps the utility must take to comply with the Clean Air Act.

Under the current arrangement, which involves a parallel consent decree and an innovative technology delayed compliance order, Guam Power Authority was given until August 15, 1982, to study the effects of seawater scrubbing on the marine ecosystem. Studies were necessary because the seawater used to remove the sulfur dioxide is returned to the ocean. Under the order, following conclusion of the study, Guam Power was to elect whether to (1) install seawater scrubbers (2) install conventional scrubbers or (3) switch to low sulfur oil. The final compliance date depends upon the option chosen, with the outside date being February 15, 1985, if seawater scrubbers were chosen.

Guam Power claims it should not be required to meet NSPS because of its expense and because with Guam's location and prevailing winds, there is no environmental benefit resulting from NSPS compliance. As a matter of fact, 90% of the time, prevailing winds blow the power plant's plume out to sea. During those limited times of adverse wind conditions, GPA employs supplemental or intermittent control systems by burning low sulfur oil.

As a matter of law, GPA's practice of fuel switching violates the Clean Air Act. Its claims of NSPS-related expense are contrary to the Agency's rulemaking record which supports a finding that the NSPS costs are reasonable. This, of course, does not provide Guam Power with the relief which it seeks, since it views as harsh and unproductive the requirements under the Clean Air Act. Without further relief, Guam Power now faces the prospect of possible expenditures of either approximately $23 million for seawater scrubbers or approximately $15 to $18 million per year to purchase the more expensive low sulfur fuel. Under existing law, there appears to be no further relief which can be granted administratively. The approach which we suggest, and which I will outline shortly, would give the Administrator the additional administrative flexibility to address this type of situation.

Suggested Approach to Allow Flexible Administration of the Clean Air Act with Regard to the Territories

We have reviewed S. 2090 and have a number of comments and suggestions which we feel would make the bill more effective in achieving its goal not only for the Northern Mariana Islands, but also for other territories as well. Attached to my statement is suggested legislative language to amend the Clean Air Act to effect this desired change.

First, S. 2090 would provide a mechanism for granting exemption of the Northern Mariana Islands from any provision of the Clean Air Act and would, for purposes of part A of Title II of the Act, exclude the Northern Mariana Islands from the Act's definition of "State". Second, the bill would not require attainment and maintenance of national ambient quality standards nor compliance with standards regulating hazardous air pollutants. Third, the bill would require the Administrator to apply only a cost-benefit test in reaching a decision on an exemption.

We suggest an approach for the Northern Mariana Islands as well as the Virgin Islands, American Samoa, and Guam, that would allow exemptions on a case-by-case basis for individual persons or sources or classes of persons or sources if they are deemed individually necessary and meet specified criteria. Such criteria should include findings by the Administrator that (1) compliance with the requirement at issue is impractical, unnecessary, or unreasonable, after considering factors such as geography, meteorology, economics, or other local factors deemed significant by the Administrator and (2) there will be imposition of any alternative requirements, enforceable under the Clean Air Act, needed to assure attainment and maintenance of national ambient air quality standards and to assure compliance with applicable emission standards for hazardous air pollutants. Finally, the legislation should provide that such a rule should be promulgated under Section 307(d) of the Clean Air Act and should be considered to be a final action of the Administrator for purposes of Section 307(b) of the Clean Air Act.

Under this suggested approach, steady progress toward clean air as well as requirement of any alternative measure needed to ensure attainment of that goal would be maintained.

Furthermore, the requirement of a cost-benefit test would not be the sole factor to be considered in making a decision that could affect air quality or impact public health. We believe that no exemptions should be granted from attainment or maintenance of national ambient air quality standards or compliance with regulations governing hazardous air pollutants. Instead, in considering a petition for exemption from other statutory requirements, the Administrator would be allowed to consider factors such as geography, meteorology, economics, or other local factors the Administrator deems significant.

Puerto Rico's Concerns Regarding Municipal Wastewater Treatment and the Clean Water Act

Puerto Rico's situation relates not to problems under the Clean Air Act but to municipal waste water treatment difficulties under the Clean Water Act. At present, 107 of Puerto Rico's more than 120 municipal treatment plants are contravening local water quality standards as well as significantly violating their permits under the Clean Water Act's national pollutant discharge elimination system (NPDES). As a result, the Puerto Rico Aqueduct and Sewer Authority (PRASA), the grantee for virtually all of the Commonwealth's projects is under a consent decree to upgrade existing treatment facilities or construct new ones.

The Clean Water Act's Construction Grants Program specifically provides financial assistance to municipalities in the planning, design and construction of publicly owned treatment works. This assistance is based on a matching formula under which the Federal Government has statutorily provided 75% of eligible costs with local government providing the remaining share. Under this program EPA has awarded approximately $300 million for treatment facilities in the Commonwealth since 1972. Despite Puerto Rico's economic commitments and projections, soaring energy costs and an unemployment rate of over 20% have made it virtually impossible for the Commonwealth to match the available Federal construction grants dollars as originally anticipated.

As a consequence of the serious shortage in local funding, five facilities in which $180 million has been invested are not yet operational and are still under construction. Others have been completed, but now await the construction of necessary interceptor sewers to bring municipal wastewater to the plant and outfalls to take the treated effluent away. In addition, some completed facilities are experiencing problems due to their idleness, such as corrosion, structural deterioration, and equipment malfunctions. Without a resolution of the funding situation, the effectiveness of these facilities and the value of the sizeable Federal investment therein are in jeopardy.

EPA is unable to support Senator McClure's proposed amendment to section 204 of the Clean Water Act as drafted because it does not address Puerto Rico's immediate dilemma.

Unless legislative action is taken in the next two weeks, Puerto Rico stands to lose approximately $30 million in unobligated Federal funds due to its inability to come up with local matching funds.

We believe a solution can be developed to resolve Puerto Rico's situation. With the Subcommittee's permission, in the next day or two we would like to submit draft legislation to accomplish the following:

1. Prevent the loss of approximately $30 million in unobligated 1981 Federal funds;
2. Provide a mechanism by which the Agency will prefinance Puerto Rico's local share of the 1981 construction grant funds to allow completion of the five existing and uncompleted facilities;
3. Provide that this local share which is initially prepaid by the Federal government will be repaid under a plan worked out between the Administration and the Commonwealth of Puerto Rico in the next few days.

We believe this is an effective solution to Puerto Rico's problem and would welcome the opportunity to work with the

Subcommittee in implementing this approach.

This should not be regarded, in any way, as setting a precedent. Only because of the already large Federal investment in Puerto Rico, the unique financial factors, and the magnitude of the treatment problem is the Agency supporting this one time approach, which is designed to address the existing difficulties.

Summary

We join you, Mr. Chairman, in seeking to provide legislative relief under the Clean Air Act for the territories as well as relief under the Clean Water Act for Puerto Rico. We support amendment of the Clean Air Act to create a process to consider petitions for needed exemption on a case-by-case entity-by-entity basis. We hope that the suggestions we have made assist you in devising such a system which will be found to be workable by all affected parties. Additionally, we look forward to working with you in resolving the difficulties encountered with 1981 construction grant funds. We would be happy to provide any additional technical assistance which you would find helpful in these matters.

This concludes my prepared statement. I would be happy to respond to your questions.

Suggested Language for Clean Air Act Amendment Regarding the Territories

Sec___. Notwithstanding any other provision of law to the contrary, upon petition of the governor of the respective territory, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as "Administrator") may by rule exempt any person or source or classes of persons or sources in the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands from any requirement of or under the Clean Air Act upon finding (1) that compliance with such requirement is impractical, unnecessary, or unreasonable due to geographical, meteorological or economic factors or other such local factors as the Administrator in his discretion deems significant, and (2) that an alternative requirement, enforceable under the Clean Air Act, will be imposed to assure attainment and maintenance of the national ambient air quality standards and to assure compliance with any applicable emission standards for hazardous air pollutants unless such alternative requirement is unnecessary for attaining, maintaining, and complying with such standards. Such a rule shall be promulgated pursuant to the provisions of section 307(d) of the Clean Air Act and shall be considered final action of the Administrator for the purposes of section 307(b) of the Act.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 20 1982

OFFICE OF
AIR, NOISE AND RADIATION

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Recently you requested the views of the U.S. Environmental Protection Agency on S. 2090, a bill to amend the application of the Clean Air Act to the Northern Mariana Islands.

We have reviewed the proposed legislation and, while we agree that it is appropriate to amend the Clean Air Act to provide a mechanism for relief for the Northern Mariana Islands, we feel the bill should be revised.

First, the bill would provide a mechanism for granting exemption of the Northern Mariana Islands from any provision of the Clean Air Act and it would, for purposes of part A of Title II of the Act, exclude the Northern Mariana Islands from the Act's definition of "State". We suggest, instead, an approach for the Northern Mariana Islands which would allow exemptions on a case-by-case basis to individual persons or sources or a class of persons or sources if such are deemed individually necessary and meet specified criteria.

Second, the bill does not require attainment and maintenance of national ambient air quality standards nor compliance with standards regulating hazardous air pollutants. Steady progress toward clean air as well as requirement of measures to ensure attainment of that goal should be maintained.

Third, the requirement of a cost-benefit test should not be the sole factor to be considered in making any decision that could affect air quality. S. 2090 would require the Administrator to apply only a cost-benefit test in reaching a decision on an exemption which may affect attainment or maintenance of national ambient air quality standards or compliance with regulations governing hazardous air pollutants. We believe that no exemptions should be granted from attainment or maintenance of national ambient air quality standards or compliance with regulations governing hazardous air pollutants. To the extent exemptions are granted from other statutory requirements, the Administrator should be allowed, in reaching a finding that compliance with the requirement at issue is impractical, unnecessary, or unreasonable, to consider factors such as geography, meteorology, economics or other local factors the Administrator deems significant.

Fourth, we suggest that the Administrator, before granting an exemption, be required to make an additional finding that alternative requirements enforceable under the Clean Air Act assure attainment and maintenance of the national ambient air quality standards and assure compliance with applicable emission standards for hazardous air pollutants.

Fifth, and finally, we suggest that the legislation provide that procedurally such a rule should be promulgated under Section 307(d) of the Clean Air Act and should be considered to be a final action of the Administrator for purposes of Section 307(b) of the Clean Air Act.

Thank you for the opportunity to review and comment on this proposed legislation. If we can be of further assistance, please call upon us.

Sincerely yours,

Kathleen M. Bennett

Kathleen M. Bennett
Assistant Administrator
for Air, Noise, and Radiation

The Chairman. Thank you very much. I will address questions to you as a panel, if we can do that, and cite some specific issues, and then invite your comments.

Is there a substantive objection to any of the particular statutes enumerated in S. 2088?

Mr. Simms. Mr. Chairman, let me take that one. I believe the answer to that is no. At this time I think that the problem we have is more of a procedural problem, and I believe that we would like to work with the committee in the next few days; if a mechanism could be put into the bill which would permit the executive to maintain some kind of control and to evaluate and conduct a kind of evaluation that has already been done by the Commission, but from the executive viewpoint, that we would be quite satisfied with that.

The Chairman. I understand that. I have no objection to consultation with the executive with respect to it, and I am pleased to know that you want to work with us over the next few days. We have asked you over 5 months ago for comments. We haven't yet received them, so if we can get them in the next few days, I would appreciate it indeed.

Maybe part of our concern is the fact that we have been unable to get a focus on the specifics until this time. We tried to respond to the general language, and you can respond to the general objection, but we have never been able to get beyond that. Perhaps we can. That is by way of counterpoint to the nice congratulation I made a moment ago about having gotten your statement.

Is your concern on S. 2088 over participation by residents of the Northern Marianas under these statutes, over what the Trusteeship Council might perceive as an extention of citizenship and by implication sovereignty prior to the termination of the trusteeship? Which is your concern? Could you tell me?

Mr. Sanjuan. The Department of State had a concern which I discussed. I have my very serious doubts that there is going to be such a problem. In the Trusteeship Council, what we may have is one of the less friendly members raising this subject. Perhaps it is inevitable but I believe that we have a reasonable majority there on this particular issue. The French, I believe, have in the past even advocated the idea that granting citizenship which they consider in a different light than we do, would be a step in the right direction. So, what I am basically saying is that there may be problems at the Trusteeship Council but I am not an expert on Trusteeship Council matters. The consensus, I gather, in the administration, is that these will not be very serious problems and we will deal with them at the United Nations when they arise.

I don't believe that a matter as important as this and as significant as this ought to be turned down because there might be some objection at the United Nations. I don't think the objections really are very substantial. They would be seen, I think, quite clearly as specious objections.

As I said before, Mr. Chairman, the covenant has been agreed upon whereby the Northern Marianas will then be a commonwealth, and therefore a territory of the United States, and its citizens will become citizens of the United States. That is well known. We are not granting citizenship here, as such. We are granting a status akin to citizenship—as if they were citizens. The essential proof would be on the accuser. What are we accelerating by doing this since we have already said we have a covenant and an agreement? I don't think the argument will really stand up very long.

The CHAIRMAN. You have testified in opposition to S. 2089 on the basis that this administration believes that the Federal Tort Claims Act applies to the Northern Marianas, and consequently the United States would not raise a defense of nonapplicability.

What assurance can you give that the next administration will not reverse this position and interpose just such a defense based on the concerns raised by the interim report and consistent with that change in position oppose the extension of the Tort Claims Act to the Marianas?

Mr. SANJUAN. Let me defer to Justice on that.

Mr. SIMMS. Mr. Chairman, first we have stated to the committee in our letter the institutional position of the United States, which is that the Federal Tort Claims Act is fully applicable.

I note that the Executive Director of the Commission agreed with that position. Our opposition comes exclusively from the long-held view of the Department of Justice that the Federal Tort Claims Act should never be amended in any kind of a piecemeal fashion. In this particular case, it is, of course, possible that future Attorneys General——

The CHAIRMAN. Are you saying that to say that it applies in the Northern Marianas is an amendment of it?

Mr. SIMMS. No, sir; we are saying that the conditions, the political changes in the Northern Marianas that have occurred over the past decade, have in our view rendered the act applicable.

The CHAIRMAN. I understand that, but you indicated that your opposition was because you were against piecemeal amendment of the act. All S. 2089 does is extend the applicability of the act. It is not an amendment to it.

Mr. SIMMS. It does so directly, and our position is that because of the interaction of changes over the last decade with the Federal Tort Claims Act itself, the act is now fully applicable. It covers through fortuitous circumstances rather than through the direct amendment to the Federal Tort Claims Act itself, and, therefore, we see absolutely no need for any kind of direct action by Congress on the Federal Tort Claims Act itself. We think the problem is solved.

The CHAIRMAN. I heard the words you used. I am not sure what you said.

Mr. SIMMS. What I have said, Mr. Chairman, is that because the Department is opposed generally and very strongly to one-shot amendments to the Federal Tort Claims Act to deal with fairly small problems if you will, we are satisfied, as I believe the Commission is, that the problem is already solved, that the Federal Tort Claims Act is applicable, and we see no reason to believe that it is a problem that is worth solving at this point by legislation.

The CHAIRMAN. Well, I understand your position that it does apply, although I frankly don't understand why it hurts to say that it applies.

Mr. SIMMS. I suppose, Mr. Chairman, it is simply viewed as unnecessary legislation.

The CHAIRMAN. But you oppose it. You don't say it is unnecessary. You oppose it because you say you are opposed to amendment, and yet I read this bill—and it is a very simple bill as bills go before the Congress, seven lines long. It says that the "Northern Mariana Islands shall not be considered a foreign country for purposes of subsection (k) of section 2680 of title 28, United States Code." That's all of section 1.

Section 2 says, "This Act shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands," and yet we have the Department of Justice in all its grandeur and majesty coming up here and saying that is an amendment to the Tort Claims Act. We can't accept that.

Mr. SIMMS. Mr. Chairman, I can't give you a better answer to that question than I have already tried to give you.

The CHAIRMAN. I was afraid you couldn't. What assurance can you give us that a court on its own motion might not agree with it, that they might decide that the Tort Claims Act does not apply, horrendous as that thought is? Judges are sometimes independent in their judgments.

Mr. SIMMS. We fully recognize that, Mr. Chairman. I, obviously, cannot give you assurances that that court will not do precisely that, but when the United States goes into court in a particular case, and, in effect, takes a position that the sovereign immunity of the United States has been waived by statute, one would normally expect a court to give a considerable amount of deference to the position of the executive on that issue.

Obviously we cannot collusively confer jurisdiction on a Federal court. We would never attempt to, hopefully.

The CHAIRMAN. Do you feel that the same considerations which underlie the Commission recommendation—I am speaking now of S. 2090—do you feel that the same considerations which underlie the Commission recommendation apply to the other insular areas?

Mr. MODESITT. Yes, sir, that is why we suggested the language which we sent to you rather than deal with this on a one territory basis as S. 2090 does. We would like to set up a mechanism which would allow the administrator to weigh such things in the future, as it applies to other areas, for example, such as Guam and the Power Authority there. We certainly support the aim of the bill, but we think that it ought to be the wider language which we suggested so you don't have to come back and do it again.

The CHAIRMAN. Why don't we just, instead of having the EPA Administrator look at all of these cases, make it even more simple and say you don't have to look at any of these cases?

Mr. MODESITT. We are charged with protecting the environment, Senator, and in the cases that we have reviewed, the waiving of certain statutory requirements would not hurt the attainment of clean air under the local conditions which have been set forth and which exist in these cases.

The Agency, however, would not want to set the example of simply blindly exempting people because there may be cases in which both the residents and the Agency would like to protect that clean air. That is why we want that administrative discretion.

The CHAIRMAN. I understand that. I don't suppose those people out there really want to be polluted and their public health affected either, and they have said there is no problem.

Can you point, can you, or the Agency, point to any real necessity for the continuation of the monitoring the clean air of those areas? You have indicated there is no problem, yet I was reading a little earlier another testimony before this committee, if I could put my finger on it here somewhere.

The Corps of Engineers had a standby powerplant aboard a ship to provide power, and the EPA out there said now you have got to raise the stack on that ship 10 feet, and yet you haven't pointed to any problem. You said in your testimony there isn't any problem.

Mr. MODESITT. I said in the testimony that there was no problem in the cases which were brought before us. On the other hand, hypothetically, let me point out that without such protection, somebody could bring in a factory which produces hazardous air pollutants and, if there were a blanket exemption, those people would have no recourse under the Clean Air Act.

The CHAIRMAN. Let me quote, because I think it is nearly poetic, Mr. Pangelinan who in his statement was talking about that smokestack on the power barge. "He also told us"—this is the EPA consultant—"He also told us we would have to deny entry to ships bringing the necessities and amenities of life to our isolated ports if the smoke from their smokestacks were too dark and opaque. Needless to say, our collective sigh of relief when he left Saipan created more air pollution than any of the smoke he was so worried about."

I think he said it quite well.

Mr. MODESITT. I think you know the Administrator has done her best to avoid this sort of regulation, Senator, and I assure you at least at this point that we have no intention of pursuing any of these issues, but we still would like to reserve that option to protect the public health because that is what we are charged with.

The CHAIRMAN. Well, I understand that. If you have that authority, could not a subsequent administration refuse to consider any application for a waiver from an insular area?

Mr. MODESITT. If that language says that the Administrator shall consider those factors, the Administrator would have to consider those factors, and if a decision were of an arbitrary and capricious nature, they could appeal.

The CHAIRMAN. They would go to court.

Mr. MODESITT. That's right.

The CHAIRMAN. Is EPA prepared to pay their court costs? No; I shouldn't ask that. That's a broader question, but, obviously, to say that they have to go to court to exempt themselves from arbitrary and capricious action, that is not always an adequate remedy.

Mr. MODESITT. I think there is probably no ideal solution here, Senator. As you are well aware, if we agree to a blanket exemption for all of these, then we would be opening the door. If we reserved that discretion, then a future Administrator could conceivably abuse it.

The CHAIRMAN. What is the present situation with the Guam Power Authority?

Mr. **Modesitt**. The Guam Power had theoretically until August 15 of this year to make a decision on which of the three options they were going to choose. If they chose sea water scrubbers as an option, they would have until, I believe, February 15, 1985, before they would have to be in compliance.

They also requested an additional 12 months in July. They made this request, to study the effects of their decision for another 12 months. That is, until August 15, 1983. We have that request for extension under study at this point. We are frankly a little concerned that the current law will not allow us to grant that under the innovative technology-delayed compliance order provision of the law.

Obviously, we are not trying to push anybody, but passing this legislation would definitely help us out in this situation.

The **Chairman**. If we were to enact the proposal that you have made to grant you the authority to grant a waiver, would you grant a waiver to Guam Power Authority?

Mr. **Modesitt**. Obviously, I can't speak specifically for the Administrator, but we wouldn't have proposed this if we were not looking very strongly toward that.

The **Chairman**. Can there possibly be any public health hazard as a result of the operation of the Guam Power Authority, the emissions from that powerplant?

Mr. **Modesitt**. If they do not continue their current practice of fuel switching, there could be a public health hazard, and the Guam Power itself has indicated that if they did not do that, that very well might be a possibility.

The problem is that under current law we are not allowed to let them do this fuel switching. We need the legislative relief.

The **Chairman**. Are you telling me that there will be a sufficient air pollution problem on Guam if they don't have this authority?

Mr. **Sanjuan**. No; it has to do with the shifting of the winds during 1, 2, or 3 weeks of the year.

The **Chairman**. Two or three weeks of the year?

Mr. **Sanjuan**. They shift from high sulfur content fuel to low sulfur content fuel.

The **Chairman**. And during those 2 to 3 weeks you have a public health hazard?

Mr. **Sanjuan**. No, you don't.

The **Chairman**. There won't be a public health hazard?

Mr. **Modesitt**. There would be a public health hazard if they don't switch fuels. The problem is the current law does not allow us that discretion. We are perfectly happy with the results of this practice, that is, cleaning. Under current law, however, our problem is that we just can't legally allow them to do it.

The **Chairman**. Would you submit for the record ambient air quality measurements during those 2 to 3 weeks in the absence of a fuel shift?

Mr. **Modesitt**. That would only be an estimate, sir.

The **Chairman**. I understand that is all you ever have is an estimate.

Mr. **Sanjuan**. They have never done it. They have always shifted to low sulfur fuel. There are no records.

The **Chairman**. I understand that, but I am really a little bit startled perhaps is the right word, knowing the conditions on that island, and the size of the island and the location of the power plant, just how extensive that health hazard would be during 2 or 3 weeks of the year. I would like to have something for the record.

Mr. **Modesitt**. We will provide whatever data we can, Senator.

The **Chairman**. Thank you. If we can shift now to S. 2633, the House passed an amendment to H.R. 5139 which includes the provisions of S. 2633 with some changes.

Do you agree with the House that the annual financial report of the territories should be certified by the Inspector General, or do you share the GAO's concern that such a provision would unduly tie up the Inspector General as it has the comptrollers?

Mr. **Sanjuan**. We think it would tie up the Inspector General, but I would like to defer to the Inspector General for that.

Mr. **Mulberry**. Mr. Chairman, we believe that the audit should be engaged by the Governor or executive officer, and performed that way rather than by the Inspector General.

The **Chairman**. Because of the workload that it would impose upon you or for other reasons?

Mr. **Mulberry**. Partially; somebody will have to pay for it one way or the other, and if I may draw an analogy or two, the single audit concept which you all agree with that we are trying to expand, and I think it falls under that heading. We will help them in any way we can. We have helped many of the States and municipalities in respect to the single audit concept.

Another analogy that I might draw is a requirement by the Securities and Exchange Commission having publicly owned companies provide an independent audit. The SEC doesn't engage the firm. They don't pay for it. I know that someone has to pay for it, and it will have to be taken into consideration in the appropriations or taxing area.

Mr. **Sanjuan**. There is a further consideration on that, Mr. Chairman, which is within our purview, and which is a very political one. I think the view of the Secretary is that we have to do whatever we can, and whenever we can, to strengthen self-government, and the more responsibility that is placed on the Governors and the governments of the territories to perform these audits and to issue these reports, the more self-government will be strengthened. I think that is the direction in which we ought to be going.

The **Chairman**. Do you agree with the GAO that the cost of a certification would be high at least for the initial review?

Mr. **Sanjuan**. I don't know very much about cost of certification.

Mr. **Mulberry**. I think initially it will be, Mr. Chairman, because based on what I think the condition of their records and financial statements might be—I think it is worth the initial cost.

The **Chairman**. What assurance do we have that once the comptrollers are removed to the IG's office the positions will not be transferred to other activities which might appear, to be of more immediate concern to the Department than the territories?

Mr. **Mulberry**. I think it is imperative that we maintain an adequate staff level at each of those locations to do the job, and you have my word that that will be done.

The CHAIRMAN. But you have the authority to transfer that workload or transfer the personnel to other work rather than meeting this workload?

Mr. MULBERRY. Yes, sir.

Mr. SANJUAN. Mr. Chairman, in addition, I believe that TIA will continue to have need for audits. When that need arises or when we see that there is a need for an audit, we will bring it to the attention of the Inspector General and advise him that he might profitably conduct an audit. We will have requirements, and if he sees the necessity for an audit, he will have to shift resources in that direction. I think the system more or less balances itself.

The CHAIRMAN. I am going to submit some questions to you for response in writing, and I will just make reference to one of those questions now. I am concerned about the issue of the confidentiality of records in the IRS area, and GAO has suggested that limited access to tax records is desirable.

I would like to have comments from each of you gentlemen from Interior and from the IG's office with respect to how we might protect that, but I will allow you to submit that for the record if you will.

On S. 2729, Governor Luis has testified that placing exclusive jurisdiction over tax matters in the district court can frustrate local enforcement since the Attorney General needs the permission of the U.S. Attorney in order to prosecute.

Do you agree with that concern and should some provision be made so the Attorney General could have ready access?

Mr. SIMMS. Mr. Chairman, I believe that—first, I interpret Governor Luis' remarks to indicate that exclusive jurisdiction in the Federal district court is satisfactory, so long as access of the Virgin Islands attorney general to that court is satisfactory.

Apparently we have in place right now a mechanism which simply isn't working. The provision requiring the consent of the U.S. attorney for the Attorney General to appear is not simply a procedural matter. When the Virgin Islands attorney general does appear, it is important from the standpoint of uniform enforcement of the Federal tax laws that he not present a position which is so far out of line as far as interpreting the very same statute goes that it causes us problems in representing a uniform position of the United States.

Apparently the mechanism isn't working. I will look into that personally and find out why it is not. I believe that it is probably simply a policy matter that can be brought to the attention of the appropriate people in the Department, but we will get back to the committee on that.

The CHAIRMAN. If you would, please; apparently you believe uniformity is more important than workload split?

Mr. SIMMS. Yes, sir.

The CHAIRMAN. Are you proposing to reverse the decisions of the trust territory high court in the District Court of the Northern Marianas on jurisdiction over the trust territory government?

Mr. FRENCH. Secretarial Order 3039, sir, did convey jurisdiction to the local governmental entities over their judicial systems. There were some ambiguities in Secretarial Order 3039 which we are presently trying to straighten out.

A part of our revision to 3039 will provide that cases involving the trust territory government or its employees acting within the course of their employment will be tried in the trust territory high court, and we seek to have that applied to the Marianas as well as to the Marshalls and the Federated States of Micronesia and Palau.

The CHAIRMAN. Will that adequately address all of the problems that they have expressed, or is that kind of a compromise?

Mr. FRENCH. No; it is not a compromise because I believe the Marianas would prefer to have all cases tried within the District Court of the Marianas.

The CHAIRMAN. What is the present backlog of the trust territory high court?

Mr. FRENCH. It is considerable. We recently appointed a new chief justice whose primary responsibility, other than administering the judicial system, is to work off that backlog in anticipation of the termination of the trusteeship.

The CHAIRMAN. Judge Louretta has raised a question over the blanket immunity which you appear to have granted the trust territory government in section 302.

Why is that language necessary?

Mr. FRENCH. I'm sorry, I am not familiar with that portion of section 302.

The CHAIRMAN. Do you have the bill in front of you? Refer to page 22 of the bill, in lines 7 through 10.

Mr. SIMMS. Mr. Chairman, that is for fairly limited jurisdiction over certain commercial and tort actions. Lines 7 through 10 in effect confer immunity for officers and employees of the government in the district court, the idea being to avoid placing those cases in the district court itself.

I think there is a problem with how that sentence relates to the rest of that provision, and I think we are going to have to do some work with it in the next few days to straighten it out because I think that the judge's query there is certainly well taken. We will get that straightened out.

The CHAIRMAN. If you would do so I would appreciate that because I have some further questions we can discuss with you in regard to that language, but I would appreciate the Office's assistance on it.

With regard to S. 2888 and the annual report on the territories, who has the responsibility for Puerto Rico within the executive branch?

Mr. SANJUAN. Well, Mr. Chairman, it is my understanding that historically the responsibility for Puerto Rico, at Puerto Rico's request has not rested with any particular department. This has been true for quite some time now. Certainly Interior does not. Responsibility lies within the White House. There is a task force dealing with Puerto Rico, chaired by Rich Williamson, which has put more emphasis on issues dealing with Puerto Rico than we have ever had had before. I would say that it is Rich Williamson's area, and that would be the focus of responsibility.

The CHAIRMAN. If I understand what you have said, there isn't an administrative delegation of authority or responsibility outside the White House staff?

Mr. SANJUAN. Precisely, because for many years Puerto Rico hasn't wanted that.

The CHAIRMAN. And the White House staff is the President?

Mr. SANJUAN. That is correct, yes, sir.

The CHAIRMAN. Yet you object to having the President make a report? I don't quite understand that, to be very honest with you.

Mr. SANJUAN. I would not be dealing with Puerto Rico in any case. That is not the part that we addressed. What we are addressing are the territories.

The CHAIRMAN. The point I am making is that the President has the responsibility. It has been reserved to the President. That is the White House staff. It hasn't been delegated to an administrative branch of Government at all, or any executive agency. It is within the White House, which is the President and the staff, and if they have got the responsibility, why do they object to filing a report?

Mr. SANJUAN. The President's report on the Nation does include Puerto Rico as well as the territories, and so the President fulfills his responsibility in that manner.

The CHAIRMAN. Does the President have any objection to providing the information contained in section 103?

Mr. SANJUAN. No; I don't think so.

The CHAIRMAN. All he objects to is being required?

Mr. SANJUAN. No; he does that again within the State of the Union message.

The CHAIRMAN. The committee has been surprised several times in the last few years by actions taken or proposed by the administration. There is the State/DOE proposal to study the territories for the storage of interim spent nuclear fuel, for example, which even the Secretary of the Interior didn't know about.

More recently we have seen in the budget process a decision by the Department of Transportation to end the territorial highway program with Interior picking up the responsibility, yet again Interior was not aware of that administration decision and had made no provision in the budget.

We had a similar experience this year on the territorial nutrition proposal from Agriculture. Absent this type of comprehensive report about which we speak, isn't it likely that these past patterns will continue?

Mr. SANJUAN. Well, Mr. Chairman, there is no question a very close and well-coordinated overview on all the policies and all the programs that deal with the territories should exist, and it is being put together under the aegis of the Department of the Interior. That is very important and, in the past has failed. We are addressing that by getting a handle on all the programs and putting them in a computer mode so that we can actually refer to any of them at any particular time, and keep apprised of the different department policy suggestions.

Only recently, for example, there was an initiative to reexamine the tax situation in the territories, and we worked on it to the point where I could assure the territories that that was not going to be done.

However, more emphasis might be put in the annual state of the Union message on territories, but the real problem is that if you make an annual report on territories and single territories out, you are putting them in a category so separate that it looks as if the territories, rather than getting closer to that self-government and self-sufficiency level that we hope they will soon be approaching, we are singling them out and separating them and treating them in a very different manner.

We don't have regional state of the Union messages for the Southwest or for the Northeast. They are all subsumed. The solution to this problem is to make sure that we put more emphasis in reporting on the territories through the President's report on the state of the Union.

The CHAIRMAN. It may have been at the request of Puerto Rico. I can't respond to that comment which was made, that it not be delegated to any agency or particular executive department or agency, but I will suggest, and I do, that two or three sentences or a paragraph in the state of the Union messages is no substitute for some idea of what the executive has in mind for Puerto Rico, and as a matter of fact, I think we could read this legislation as having quite the opposite effect from that which you suggest, and that is somehow a derogation of their right of self-government. It will at least give them some idea of what the administration is trying to do to their self-government or how it is going to affect their right of self-government.

What I fear is that really in a policymaking status they are falling between the cracks. There is no responsibility focused anywhere.

Mr. SANJUAN. You mean Puerto Rico?

The CHAIRMAN. Yes, and as a result, we have suggested that there be a report filed which will indicate what it is the executive has in mind for Puerto Rico.

Mr. SANJUAN. But only very, very informally. If Puerto Rico feels that it is falling between the cracks, which is because it has not wanted to be under the aegis of any department, then let Puerto Rico make a suggestion as to which department they would like to have responsibility. Then they would not be falling between the cracks.

I don't think, however, in this administration, the issue is that Puerto Rico has been falling between the cracks. A tremendous amount of emphasis has been placed on Puerto Rico.

The CHAIRMAN.. I don't mean to derogate the executive's interest in Puerto Rico. The problems are very obvious there and throughout the region. I understand that Puerto Rico might well not like to be placed within the Department of the Interior.

Mr. SANJUAN. We respect that.

The CHAIRMAN. I think that has been perhaps the background of their request, that they not be delegated somewhere. The other side of that is not to say that having been left out by their own request, they have not been included in the specific administrative responsibility of any executive branch, that that doesn't mean that they are not entitled to know what program is being laid out for them, and right now because they are not within an executive agency, there is no program laid out for them in any formal manner.

Mr. SANJUAN. Well, Mr. Chairman, I am a member of the task force not because of Interior's aegis but because all the departments have been asked to provide a member. I have attended most of the meetings where a guest such as the Governor or members of the Governor's staff deals with whatever subject the task force is considering. It is my feeling that never before have all the programs of the Federal Government or Puerto Rico been so clearly delineated before the Governor, nor have we had more access to Puerto Ricans, the Commonwealth's plans and requests for executive branch action.

The CHAIRMAN. Let me focus on another aspect of that question. It is much broader than just Puerto Rico.

The constitution of the United States provides for interaction between the three branches of Government. Two of those are the executive and the legislative, and when we move the decisionmaking responsibility out of the Cabinet level to White House staff, we have deprived the public and the legislative branch of the interaction between the two branches. We have deprived the legislative branch of the opportunity for input and discussion. We have deprived the legislative branch of the opportunity to ask questions of responsible officials.

We have deprived the public of the opportunity to observe that interaction, and to say that there is a task force centered in the White House staff seems to me to be again an example of that difficulty.

I have a strong feeling that is one of the reasons that we have had trouble over the years is that more and more of the real decisionmaking authority is taken out of the public eye and public view and taken out of that interaction between the legislative and executive branches, simply by moving it out of the Cabinet level and into the White House staff.

Mr. SANJUAN. Well, that motion was made long ago at Puerto Rico's request, not by this administration, and I think what the Reagan administration has tried to do is, without offending or insulting the people of Puerto Rico and the Puerto Rican government, to try to give as much emphasis to matters dealing with Puerto Rico as possible. I think that the task force was so successful that we were pressured by the other territories to create a similar task force, and we have created one that has been working.

It is chaired by Rich Williamson and me. It is under the aegis of the Department of Interior, but it definitely uses the White House staff as a network to bring about its objectives more effectively.

The CHAIRMAN. Let me ask a slightly different question and rephrase it in a slightly different way then.

Is the objection to filing the report, or is the objection to having the President file the report?

Mr. SANJUAN. I am not exactly sure of what discussions we have had with OMB on this, but I believe it is to filing the report as such because it separates the territories from the normal process.

The CHAIRMAN.. That means then you are willing to discuss it with the governor, but you are not willing to discuss it with the Congress?

Mr. SANJUAN. No; we are perfectly willing to discuss the plans with Congress at any of these hearings, as.is obvious. I come and represent the territories, and again I have no right to speak for Puerto Rico. I have no jurisdiction in that area, but it seems to me that the reason that Puerto Rico is in an anomalous situation—and this does not carry over to the other territories—the reason Puerto Rico is in an anomalous situation is because Puerto Rico doesn't want to be included in any particular department, not only not in Interior, but in any other.

The Chairman. Maybe this is the wrong place to ask the question, but if the committee were to ask Mr. Rich Williamson to come up here and testify, would he? I know Rich Williamson. I could sit down and talk to him. I can get him on the phone.

Mr. Simms. Mr. Chairman, I might interject here that I certainly appreciate your sensitive remarks about the essential inaccessibility of White House staff to Congress. Although the situation did not involve Puerto Rico, my office has advised Mr. Williamson that he should not come up here to justify, before a committee of Congress so long as he maintains his present position. I believe you have identified and correctly characterized a problem. What the solution to the problem is I am not sure, but you hit the nail on the head.

The Chairman. Thank you very much. I appreciate that. It is a dilemma for all of us, and we are trying to find a way to solve that problem.

What we are suggesting here in the report language is one way of formalizing this mission from responsible people to the people who are responsible.

Mr. Simms. It has been my experience in this area that there are generally ways to get the information Congress needs to Congress, and I have a feeling that—again, I don't want to prejudice anybody's right to disagree within the administration—those things normally can be worked out.

The Chairman. The Secretary has quite correctly said he has no right to speak, but he also has to speak, and that is the kind of information we get, and I appreciate that. There is a dilemma. I think it is one that needs to be worked out.

We are not trying to single out the Puerto Rican question, but we do need some information so that we don't have these surprises that keep coming to us which originate from sources which have no formal links between the executive branch and the legislative branch.

I applaud the task force and what they have done. I think Mr. Williamson is obviously a very capable man, and he is also a very candid one, one with whom we have very good relationships personally as well as with the committee. It hasn't always been that way, and it may not always be that way in the future, and that is the dilemma.

As long as he is there and conducting that activity, I think we will have fewer problems, and as a matter of fact, I think what this administration has done has strengthened the policymaking role and has aided rather than hindered what we are trying to do here, but there is no assurance that that is more than a decision or a personality away from change. We would like at least to find some way of getting the information to us on a more regularized basis.

There will be some questions submitted for the record. The record will remain open for 2 weeks to receive that additional information.

Thank you gentlemen very much for your participation here this morning.

[Whereupon, at 1 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Committee Questions

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 5 - 1982

The Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Following the hearings on September 13, 1982 regarding a number of territorial bills, you submitted a list of questions to me in writing.

Enclosed are the answers to those questions that are not under the jurisdiction of another agency and that were not dealt with at the hearings.

If I can be of further assistance, please let me know.

Sincerely yours,

Stuart P. French
for Pedro A. Sanjuan
Assistant Secretary
Territorial & International Affairs

Enclosure

ANSWERS TO PREVIOUSLY UNANSWERED WRITTEN QUESTIONS SUBMITTED TO PEDRO A. SANJUAN BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES FOLLOWING THE HEARINGS OF SEPTEMBER 13, 1982, REGARDING A NUMBER OF TERRITORIAL BILLS.

QUESTIONS ON S. 2729

Question: What is the present backlog of the TT High Court?

Answer: At present there are eleven criminal and fifty-six civil appeals pending in Appellate Division of the High Court, of which four criminal and nine civil are scheduled for hearing in November 1982. In the Trial Division, twenty-two criminal and three hundred thirty-seven civil cases are pending.

Question: What do you plan to do about the cases which Judge Burnett had heard but not decided prior to leaving for the Marshalls?

Answer: Judge Burnett will take a temporary appointment to the High Court to deliver opinions on the cases he heard but did not decide while he was sitting as Chief Justice of the High Court.

Question: Do you plan to relitigate the Truk land cases?

Answer: We do not. These are cases previously heard by Judge Burnett on which he is expected to deliver opinions in the near future.

Question: When the Marianas jurisdictional statute goes into effect in January, what will happen to Judge Laureta's caseload in the district court?

Answer: It is expected to be substantially diminished.

Question: With a large backlog in the TT High Court, a nearly vacant district court, and the recent signing of compacts with Palau and the Marshalls, why do you want to increase the caseload of the TT High Court which should be slowly going out of business?

Answer: Section 302 of S. 2729 would transfer to the High Court of the Trust Territory the jurisdiction of what we believe to be a small class of cases that would otherwise be brought to the District Court for the Northern Mariana Islands. We believe that these cases will be few in number. The rationale for the transfer in the section-by-section analysis was submitted with the drafting service on S. 2729. The High Court is fully staffed at present, and the services of additional judges can be made available to the High Court, if need be. We believe that the few additional cases that section 302 may generate for the High Court would not be overly burdensome. We expect the High Court to be able to terminate its function in an orderly manner at the time the trusteeship is terminated.

QUESTIONS ON S. 2888

Question: With primary jurisdiction over the various territories in either the White House, Interior, State, Defense, or Coast Guard and with virtually every agency having one or more programs operating in the territories without benefit of any co-ordination or central policy, doesn't this type of report offer the only realistic possibility of an annual review of which this government is and where we are going?

Answer: As I stated on September 13, 1982, we would prefer to bring the territories into the mainstream of American life, and not institute procedures or reports that tend to separate them from other Americans. The information you seek can be easily provided at hearings like these.

Question: Section 201 would appear to be only a clarification that renovation of Guam Memorial Hospital and a dispensary fall within the definition of "health care needs". Do you feel that these items are not covered?

Answer: We believe that renovation of the existing Guam Memorial Hospital building, renovation of the old Guam Memorial Hospital building, and construction of a dispensary would fall within the definition of "health care needs" in section 205 of Public Law 97-134, as amended.

Question: What do you propose should be done with juveniles in the Virgin Islands prior to trial if you oppose a pre-trial detention facility? Have you offered any alternatives to the Virgin Islands to deal with this problem?

Answer: We are aware that the problem exists. We are not disputing the need. We are saying that the Federal budget cannot accommodate a request for $3 million at this time.

Question: Do you agree with the Governor's list of needs in the water and power area? Given the state of the Virgin Islands's economy, how do you propose that the water and power problems would be resolved absent federal assistance?

Answer: We believe that the Government of the Virgin Islands could borrow the funds necessary to make its water and power improvements. If the Virgin Islands does not wish to enter the private capital market for the entire amount needed for the improvements, it could call upon the $30 million in remaining loan guarantees, which the Secretary of the Interior is authorized to give under Public Law 94-392, as amended. The loans could be repaid, in part, by decreasing or eliminating the local government's subsidy of potable water. Hotels and individuals, who can afford to pay their way, are the largest users of subsidized water. Again, we are saying that the Federal budget cannot accommodate this request for $40 million.

Question: Given the average income levels in the territories, the limited amount of disposable income, and the high costs for the generation of power and water, isn't it likely that some subsidy will probably be required in all areas for the forseeable future if adequate levels of water and power are to be provided to the residents?

Answer: We do not think that subsidy of water and power is inevitable in the territories, nor in the best interests of the residents. In a water-short area like the Virgin Islands, charging for water at its true cost should help and not hinder the provision of adequate amounts of water for the residents. More realistic rates would encourage conservation by larger users who can afford to pay, thus increasing availability for other residents. In addition, more complete metering and plugging of leaks in the distribution system would eliminate the need for large rate increases. With regard to power, some improvement in maintenance and operating efficiency could probably lower rates or at least maintain existing rates without subsidy. We recognize that additional investment capital is needed to improve the efficiency of the water and power systems in the Virgin Islands and we suggest that sources of capital are available, including loans backed by Interior guarantees, if repayment can be assured through an adequate rate base and collections.

The same principle also applies to the other territories, although precise conditions vary among them. Local rate subsidies may be justified on a temporary basis in some territories, but they should be provided under a plan to place utilities on a self-sustaining basis.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 29 1982

OFFICE OF
THE ADMINISTRATOR

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
Room 3200
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I appeared before the Committee on Energy and Natural Resources on September 13, 1982, and testified on matters relating to the territories and the Clean Air and Clean Water Acts.

During the hearing and following it as well, a number of questions were raised which required responses for the record. Enclosed are EPA's responses to those questions. Additionally enclosed is the transcript which was sent to us for review and correction.

Thank you again for the opportunity to appear before you on these matters of concern. If I can be of further assistance, please contact me.

Sincerely yours,

Leland E. Modesitt, Jr.
Director
Office of Legislation

Enclosures

able Copy

Follow-up Questions to the Appearance of Leland E. Modesitt, Jr.
Before the
Senate Committee on Energy and Natural Resources

Questions on S. 2090

Question:	Do you feel that the same considerations which underlie the Commission recommendation apply to other insular areas?
Response:	As I indicated in my prepared statement, we have reviewed S. 2090, which embodies the Northern Mariana Laws Commission's recommendation regarding application of the Clean Air Act to the Northern Mariana Islands, and have a number of suggestions to make the bill more effective. The conclusion of the Commission holds merit not only for the Northern Mariana Islands but for other territories as well. Therefore, rather than specifically legislating individual exemptions based on different situations as part of the Clean Air Act, our approach would involve amending the Clean Air Act to include a generic process for the Northern Mariana Islands, the Virgin Islands, American Samoa, and Guam under which exemptions could be allowed on a case-by-case basis for individual persons or sources or classes of persons or sources within the aforementioned territories if the exemptions are deemed individually necessary and meet specified criteria. Such criteria should include findings by the Administrator, that (1) compliance with the requirement at issue is impractical, unnecessary, or unreasonable, after considering factors such as geography, meteorology, economics, or other local factors deemed significant by the Administrator, and (2) there will be imposition of any alternative requirements, enforceable under the Clean Air Act, if needed, to assure attainment and maintenance of national ambient air quality standards and to assure compliance with applicable emission standards for hazardous air pollutants. Specific language drafted to accomplish this was attached to my prepared statement.
Question:	Is the waiver mechanism sufficiently tight that a subsequent Administration could not for administrative convenience refuse to consider any application for a waiver from an insular area?
Response:	Under the approach we suggest, the Act would authorize the Governor of a listed territory to apply to the Administrator of EPA for exemption under the Clean Air Act for a person or source or class of persons or sources within the territory under the Governor's jurisdiction. Upon receiving a petition, the Administrator

of EPA would be empowered to grant the requested exemption but only after making a number of required findings as discussed in the response to the first question.

We prefer this approach under which individual petitions for exemptions would be reviewed with regard to their necessity and air quality impacts rather than legislatively granting special individual exemptions. In my statement, I explained in greater detail our reasons for suggesting an alternative approach.

As far as the long range merits of such an approach are concerned, we believe that a generic exemption process would allow the Administrator to review and respond to the special needs of the territories in a timely manner as those needs arise--without the need to request special legislation each time the need arises for such administrative flexibility.

Of course, whenever discretion is granted, the original grantor and grantee involved in its creation cannot guarantee that all subsequent instances of its use will be full or fitting exercises when compared with the expectations of the original parties. It would be impossible at this time or any other for representatives of this Administration to offer assurances as to how future Administrations would handle this discretionary authority. On balance, however, we feel the merits of our proposal outweigh the drawbacks, particularly since Congress retains the authority to offer specific legislative relief.

Question: Do these same general concerns over the inappropriateness of stateside standards in the insular areas apply to the Water Pollution Control Act and other Federal regulatory programs as well? Do you anticipate submitting legislation to address these areas?

Response: Federal standards under the Clean Water Act are first technology based, premised on the technological ability of facilities within a particular industrial category to control pollution and may be supplemented by water quality based standards. Within the scope of the law, however, we are opposed to treatment for treatment's sake and support efforts to address that problem where environmental quality and compliance with local water quality standards can be assured.

Presently, the Clean Water Act only allows modification of industrial technology-based standards in limited circumstances involving the discharge of non-conventional pollutants. On the basis of our experience this year with efforts to reauthorize the Clean Water Act, we anticipate that there will be strong interest in the next legislative session in exploring legislative mechanisms by which the scope of potential modifications to industrial technology based standards can be broadened. We believe that Congressional consideration of legislative proposals to accomplish this is appropriate, but would strongly urge that any examination of this question be done in the context of a general consideration of the Clean Water Act as a whole to ensure adequate analysis of the consequences of any proposed change on all point sources regulated under the Act.

Question: What is the present situation with the Guam Power Authority?

Response: Both the decree and order required the Guam Power Authority to complete a study of the effects of seawater scrubbing on the marine ecosystem by August 15, 1982. On that date, the authority was required to elect whether it would achieve compliance by means of innovative technology (seawater scrubbing) or by conventional means. While the study has been completed, the Authority requested, by letter of July 9, 1982, that it receive an extension of the seawater scrubber study for twelve additional months. In its request for an extension, the authority indicated that the scrubber would not produce substantial environmental impacts. However, the Authority also stated that seawater scrubbing may adversely affect some of the local marine organisms. Additional time was requested to study these possible impacts.

The Agency is presently reviewing its enforcement options in the context of developing a response to the Authority's request. Further time to study the effects of seawater scrubbing may not be warranted. Additionally, the Clean Air Act restrictions on the duration of innovative technology delayed compliance orders are likely to preclude amending the order.

Question:	Provide additional information on Guam Power Authority's past and current air quality status.
Response:	EPA data show that in 1972 eight exceedences of the primary 24 hour sulfur dioxide (SO_2) standard occurred in the vicinity of Guam Power Authority's Cabras Power Plant. In 1973, no exceedences of the standard were reported. In 1974 and 1975, one exceedence of the standard was reported each year. Generally, the data show that no exceedences of the SO_2 standard have been reported since 1975 in the vicinity of the Cabras Plant.

Several changes in circumstances relating to the plant's operation and emissions monitoring have occurred since 1975 which might be part of an overall cause-effect equation to explain why exceedences have ceased to be reported. The following changes have undoubtedly influenced the data: stack heights at the plant have been raised; a supplemental control strategy (SCS) has been implemented; and monitoring station locations have changed. The extent to which each of these factors has influenced the data cannot be readily determined; however, implementation of SCS and elevation of stack heights have impacted the attainment status of the immediate area.

The supplementary control strategy (SCS) employed at the Cabras plant involves the burning of low-sulfur fuel during periods of adverse wind conditions (i.e., when the wind blows toward populated areas contrary to the direction of the prevailing winds). It should be noted that the SCS is imposed and enforced through Guam law and its regulatory requirements. EPA cannot endorse or officially recognize SCS as an allowable form of emission control due to its prohibition by the Clean Air Act on the grounds that it is not a continuous emission control as required by Section 123 nor a form of control which meets the new source performance standard requirements of Section 111. Our proposed approach would allow the Administrator to consider permitting use of SCS as an alternative requirement to achieve attainment enforceable through the Guam SIP, if the requirement of Sections 111 and 123 were waived as they pertain to the Cabras facility.

Other Questions

Question: What is EPA's view of Section 305 of the House Amendments to H.R. 5139, regarding regulation of a rum refinery in the Virgin Islands under the Clean Water Act?

Response: EPA supports the concept and objective underlying this proposal. We believe Section 305 represents a well reasoned approach reflecting the need for more cost effective pollution control. Particularly in the context of the Administration's Caribbean initiative, we support the basic goals of avoiding unnecessary and expensive treatment where a demonstration can be made by the rum manufacturers on the Virgin Islands that their discharge will not adversely impact the water quality of the receiving waters.

The situation of these manufacturers is an example of a larger national problem resulting from the fact that the strict application of the Clean Water Act can, and does, result in treatment for treatment's sake. Such treatment serves no useful purpose, and in many cases can be extremely expensive, and may not even achieve any real environmental improvement.

With regard to the technical language of this proposal, however, we believe it should conform to the operation of Section 301(h) of the Clean Water Act. As Section 305 is presently drafted, it gives the Governor of the Virgin Islands the authority to grant modifications to technology based standards for conventional and nonconventional pollutants. This is inconsistent with the operation of the marine discharge waiver program under Section 301(h) which grants such authority for modification of municipal secondary treatment standards only to the Administrator.

A second concern is that the criteria contained in the Virgin Island proposal are inconsistent with the environmental tests contained in Section 301(h) of the Clean Water Act. To the extent that the proposed amendment does track the "environmental waiver" language of Section 301(g) of the Clean Water Act, it leaves out two of the criteria that Congress included in the 1977 amendments to the Act. A third concern is that while the proposal appears only to focus on any discharge from a point source "in existence" it, nonetheless, also includes a waiver from the provisions of section 306 of the Clean Water Act which relate to "new sources". This leaves the intent as to the scope of this provision somewhat uncertain.

Question: What is EPA's legislative recommendation regarding Puerto Rico's sewage treatment facilities and the Clean Water Act?

Response: The Concept of our recommendation is laid out in our testimony. EPA's specific legislative recommendation is as follows:

Notwithstanding any other provision of law, sums allotted to the Commonwealth of Puerto Rico under section 205 of the Federal Water Pollution Control Act for fiscal year 1981 shall remain available for obligation for the fiscal year for which authorized and for the period of the next succeeding twenty-four months. Such sums and any unobligated funds available to Puerto Rico from allotments for fiscal years ending prior to October 1, 1981, shall be available for obligation by the Administrator of the Environmental Protection Agency only to fund the following systems: Aguadilla, Arecibo, Mayaquez, Carolina, and Camuy Hatillo. These funds may be used by the Commonwealth of Puerto Rico to fund the non-federal share of the costs of such projects. To the extent that these funds are used to pay the non-federal share, the Commonwealth of Puerto Rico shall repay to the Environmental Protection Agency such amounts on terms and conditions developed and approved by the Administrator in consultation with the Governor of the Commonwealth of Puerto Rico. Agreement on such terms and conditions, including the payment of interest to be determined by the Secretary of the Treasury, shall be reached prior to the use of these funds for the Commonwealth's non-federal share.

APPENDIX II

Additional Material Submitted for the Record

Commonwealth of the Northern Mariana Islands
Office of the Governor
Saipan, Mariana Islands 96950

Cable Address:
Gov. NMI Saipan

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
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WASHINGTON, D.C. 20510

September 9, 1982

The Honorable James A. McClure
Chairman
Senate Committee on Energy and
Natural Resources
United States Congress
Washington, D.C. 20510

Re: Proposed Senate Bills #2088, 2089, 2090, 2632 and 2729

Dear Chairman McClure:

Thank you for your letter of August 26, 1982, requesting comments from my office concerning proposed legislation before the Senate Committee on Energy and Natural Resources affecting the Commonwealth of the Northern Mariana Islands. This group of bills addresses various areas of concern to the Northern Marianas, and we are happy to forward our observations and recommendations to your Committee.

1. Senate Bill 2088; NMI Residents Eligible for U.S. Civil Service.

Senate Bill 2088 provides that any citizen of the Northern Mariana Islands who declares his intention in writing to become a citizen of the United States upon full implementation of the Covenant, may obtain membership in the United States Civil Service System. S.B. 2088 addresses an issue of concern to CNMI citizens, inasmuch as they are currently ineligible to participate in benefits from, or membership in, the United States Civil Service System. Federal employees providing government services in the Northern Marianas, such as U.S. Postal Service personnel, are presently precluded from entering the U.S. Civil Service because of the interim status of CNMI citizens pending termination of the Trusteeship Agreement. We support the intention of S.B. 2088 and urge its passage in order to allow CNMI citizens to qualify for membership in the United States Civil Service System.

2. Senate Bill 2089; Interim Application of Federal Tort Claims Act.

Senate Bill 2089 provides for an interim application of the Federal Tort Claims Act (in Title 28 of the United States Code) to the Commonwealth of the Northern Mariana Islands. Pending termination of the Trusteeship Agreement, and finalization of the Commonwealth status provided in the Covenant, S.B. 2089 establishes the applicability of the Tort Claims Act to the Commonwealth for this interim period. We support the intention of S.B. 2089 and urge its passage in order to extend the provisions of the Federal Tort Claims Act to the CNMI pending the termination of the Trusteeship Agreement.

3. Senate Bill 2090; Application of the Clean Air Act to CNMI.

Senate Bill 2090 provides for a discretionary waiver of the provisions of the Clean Air Act (42 U.S.C. 7601) by the Governor of the Commonwealth of the Northern Mariana Islands in the event he finds "that the benefits of compliance with that requirement are to be significantly outweighed by the costs of compliance." We heartily endorse this solution to the continuing uncertainty in the CNMI over the present status of the Clean Air Act. Because of the islands' low population density, and small land area, the stringent standards established in the Clean Air Act should not be applicable to the CNMI at this time. Automobile importers, gasoline dealers, and other private industries impacted on by clean air standards are concerned because of this uncertainty as to the applicability of the Clean Air Act in the CNMI. In the past, a waiver was authorized by various federal officials upon the urging of the Governor. It is appropriate that S.B. 2090 be enacted in order to place this waiver authority in the discretion of the CNMI Governor. We urge this Committee's recommendation of passage of S.B. 2090.

4. Senate Bill 2632; Bond Issuance in American Samoa.

Senate Bill 2632 provides for the authorization of issuance of bonds by the Government of American Samoa, and declares said bonds exempt from taxation by the United States or any State, territory or possession thereof. We have no objections or comments on this legislation.

5. Senate Bill 2729; Changes in District Court Jurisdiction.

Senate Bill 2729 provides for establishment of "supreme court status" in the appellate divisions of the territorial U.S. District Courts (Virgin Islands, Guam and the NMI), as the courts of last resort on matters resolved under local law. Under current caselaw (Camacho vs. Civil Service Commission, 9th Cir., 1982, 666 F.2d 1257) all decisions of the appellate divisions of the U.S. Virgin Islands, Guam and NMI District Courts are appealable to the United States Courts of Appeals, regardless of whether the matter under appeal is based on local or federal law. As such, interpretations of the NMI Constitution, as well as the Virgin Islands and Guam Organic

Acts, are presently reviewable, in the Ninth or Third Circuit Courts of Appeals. Under S.B. 2729, all trial court matters decided by the local territorial or U.S. District Courts decided solely on the basis of local laws reach their final review in the appellate divisions of the U.S. District Courts. These U.S. District Court Appellate Divisions thus become the interim "supreme courts" of Guam, the NMI, and the Virgin Islands, pending the establishment of local Supreme Courts.

S.B. 2729 also addresses the controversial status of jurisdiction over the Trust Territory of the Pacific Islands in the NMI District Court. Uncertainty in this area has caused confusion in the local courts, although both the Commonwealth Trial Court and the NMI District Court have asserted jurisdiction over the TTPI government in matters based on contracts or tortious events arising in the Northern Mariana Islands. S.B. 2729 provides standards for jurisdiction over the TTPI government in the NMI District Court, and extends TTPI governmental immunities presently included in the Trust Territory Code concerning discretionary function, malicious prosecution, libel, etc. S.B. 2729 provides that the TTPI government shall be treated the same as the United States Government when being sued in the NMI District Court, and declares that there shall be no jurisdiction in that court "over actions brought against the officers or employees of that government or its agencies or instrumentalities with respect to their acts or ommissions colorably related to their official duties."

Both of the jurisdictional issues addressed in S.B. 2729 affecting the NMI will have a significant impact on the CNMI government. We are unable, however, on this short notice, to provide comments of sufficient detail in order to take a position on this legislation. We believe arguments can be made on both sides of the "interim supreme court" proposal involving the appellate division of our NMI District Court. While we agree that the local U.S. District Court may be uniquely qualified to interpret local laws, we also are aware that certain members of the NMI legal community support outside review of important decisions concerning local laws in the local courts. Further, while we support the assertion of jurisdiction over the TTPI government by the NMI District Court, and have taken this position consistently in that court opposing TTPI motions to dismiss, we are not sure at this point whether the limitations placed on this jurisdiction in S.B. 2729 are sufficient, or overly restrictive. In both cases, we believe further review is necessary before we take a definite position on this bill. We would appreciate your Committee sending us any Committee reports, or other background information on S.B. 2729, so we might know the objectives of its passage, the intent of its language, and the present position of the Committee on these matters impacting on local court jurisdiction in the NMI.

Please keep us informed as to the progress on these important bills. We will be forwarding additional information on S.B. 2729 as soon as it is available.

Respectfully submitted,

PEDRO P. TENORIO
Governor

Territory of Guam
Office of the Governor
Agana, Guam 96910
U.S.A.

PAUL M CALVO
Governor

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SEP 17 1982

COPY

Honorable James A. McClure
Chairman, Committee on Energy
 and Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to comment on bills which will directly affect Guam. Of particular concern to Guam are S. 2633 and S. 2729.

Federal efforts with respect to Guam must be consistent with a clearly defined policy regarding the federal-territorial relationship. The ultimate goals for the people of Guam are self-government and economic independence. In a referendum conducted in conjunction with our recent primary election, the people of Guam overwhelmingly selected commonwealth status as the desired ultimate Guam-United States relationship. I believe very strongly that Congress must act in a manner consistent with the desires of the people of Guam.

With those considerations in mind, I believe that S. 2633 assumes a concept which is not consistent with our progression toward self-government. The appointment of a federal comptroller was provided for in the Guam Elective Governor Act (Public Law 90-497) in 1968. It is ironic that the intent of that law was to provide for the popular election of the Governor and Lieutenant Governor as a step forward in the development of local self-government. Those functions mandated to be performed by the comptroller are, as succinctly stated by a number of Representatives while considering the original bill, "a clear encroachment into the sphere of governmental responsibility which rightfully and legitimately belongs to the elected officials of the government of Guam". I am enclosing a copy of the views of those Representatives. Their objections to the imposition of a government comptroller into the government of Guam are the same basic objections that I have. These objections are not removed by S. 2633.

The authority of the government comptroller under this bill and under existing law extends, not only to federal funds, but also to all revenues and receipts and all expenditures of funds and property of the government of Guam. I believe that a better use of the funds now required to maintain a government comptroller in Guam would be to provide for independent audit and technical assistance to the government. Guam needs the tools necessary for it to improve the quality of its government. It requires assistance in areas such as computerization of financial systems, manpower studies and standards, and training for mid-level management. It is this kind of assistace which we require in order to attain our goal of self-government. It is therefore my recommendation that Section 9-A of the Organic Act of Guam be repealed.

Title II of S. 2729 provides for a judicial system reform which would constitute a step in the direction of self-government. The bill would give to the territory a complete judicial system, including an appellate court, and a relationship to the federal courts not unlike that of the states. I therefore support the concept embodied in this bill.

Again, I would like to thank you for this opportunity to comment on these measures.

Sincerely yours,

PAUL M. CALVO

Enclosures

ADDITIONAL VIEWS OF REPRESENTATIVES MINK, KASTENMEIER, MEEDS, RYAN, O'HARA OF MICHIGAN, AND EDMONDSON

We support H.R. 7329 which provides for an elective Governor for Guam. This legislation represents a major step in the realization of complete self-government for the territory of Guam. It comes at a time when the world is watching us to see if we are really keeping faith with our doctrines of freedom and self-governing societies. All the evidence of the past 18 years clearly indicates that the people of Guam have more than proven their readiness for greater autonomy in their own governance. Therefore, it is proper and necessary that this bill pass.

We have one reservation, however, about this bill which we do not feel has been given careful consideration. While on one hand granting Guam greater self-determination by providing for a popularly elected Governor, the bill also provides for the appointment of a government comptroller by the Secretary of Interior who serves at his pleasure and who shall have the duty to audit all accounts and recommend adjudication of claims pertaining to the revenue and receipts of the government of Guam. In addition, the comptroller is directed to bring to the attention of the Secretary of the Interior and the Governor of Guam all failures to collect amounts due the government, and expenditures of funds or uses of property which are irregular and further he is directed to use his power in order to improve the efficiency and economy of programs of the government of Guam.

We believe that these mandated duties of the Comptroller represent a clear encroachment into the sphere of governmental responsibility which rightfully and legitimately belongs to the elected officials of the government of Guam. Further, the General Accounting Office has the power to review all accounts, revenues, and disbursements of the territory of Guam and to create a comptroller especially for Guam would be duplicative of the functions already existent in the General Accounting Office.

Broad and sweeping powers are given to the comptroller by virtue of several provisions in the bill. He may require all departments, agencies, and even local units of government to furnish him information with respect to the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices. Also, he is accorded full access to all books, records, documents, and other papers of these departments and agencies. In addition, he is even granted the quasi-judicial power to summon witnesses and administer oaths.

We are opposed to this provision in the bill because we believe that it is neither necessary nor proper. It casts doubt on the integrity of the people and government of Guam to run their own affairs which we believe is a direct contradiction of the concept exalted in this bill by the grant of an elected Governor. What, it may be asked, is gained with a new elected Governor, if in the place of an appointed one, a new Federal watchdog is established lacking only the name of "Governor", but with broad authority to harass the elected Governor and the Guamanian Legislature with findings that they have failed to collect certain moneys, that expenditures are irregular, that programs could be run more efficiently or more economically, or that certain claims ought to be adjudicated.

There is no doubt in our minds that the territory of Guam could exist with such a comptroller, but we believe that it is a needless aspersion on the ability and capacity of these American citizens to handle their affairs as properly and expeditiously as any other American community. To say that they are politically mature enough to elect their own Governor, and then impose an unwarranted Federal overseer of the funds belonging to the people of Guam, we believe is so inconsistent as to make the new powers of doubtful value. Puerto Rico, Alaska, and Hawaii made their progression without such Federal overseers and we believe that Guam could certainly move ahead in the same manner as they have done.

We are, for the same reasons, opposed to the identical provision contained in S. 450, which bill provides for an elective Governor in the Virgin Islands.

PATSY T. MINK.
BOB KASTENMEIER.
LLOYD MEEDS.
WILLIAM F. RYAN.
JAMES G. O'HARA.
ED EDMONDSON.

ADDITIONAL VIEWS OF CONGRESSMAN THEODORE R. KUPFERMAN

I believe that the people of Guam are ready for the self-government set forth in H.R. 7329, as amended. While providing for home rule, we have built in some safeguards necessary where there is a continuing Federal interest.

Of special moment is the fact that the first elected Governor will be chosen on November 3, 1970 (and thereafter every 4 years), free from the pressures of a presidential election.

Although I shall not then be a Member of the Congress or of the committee, I shall look forward to attending the inauguration in 1971 of the Governor elected under this law.

TED KUPFERMAN.

TESTIMONY OF HON. BALTASAR CORRADA
Resident Commissioner from Puerto Rico

on S. ~~2846~~ 2888

Before the
Senate Energy and Natural Resources Committee

Sept. 13, 1982

Mr. Chairman, Members of the Committee:

My name is Baltasar Corrada and I am Resident Commissioner from Puerto Rico.

I would like to submit a brief statement in support of the general provisions of S. ~~2846~~ 2888, the "State of the Insular Areas Report Act" which incorporates some provisions affecting Puerto Rico and the territories of the United States.

Similar legislation just last week passed the House of Representatives and, as passed, the Territorial Omnibus Bill, HR 5139, contained a new section 501 which would alter the cost-sharing formula in Puerto Rico for waste water treatment plant construction for three fiscal years. This would be done by amending the Federal Water Pollution Control Act to lower the local matching share and enable Puerto Rico to use the same amount of Federal funding for a lesser number of projects.

I am pleased to note that the draft bill submitted by your Committee to the Administration for comments, and S. ~~2846~~ 2888, contains Section 204 which brings the Senate bill into conformance with H.R. 5139 as passed.

With a considerable Federal investment, Puerto Rico in the 1970's started a massive restructuring and expansion of wastewater treatment plants and, on a simultaneous basis, began construction of seven large regional sewage plants under the Clean Water Act.

Unless the Island can assure the EPA that matching funds will be found in the near future an estimated $48 million in Federal grants already given to the Puerto Rico Aqueducts and Sewers Authority may be deobligated, or lost. The cost-sharing formula for other territories allows an exemption from matching share provisions.

In our densely populated Island, the completion and integration of our total sewage treatment plants is a high priority of Governor Romero Barceló's Administration in Puerto Rico. Due to the economic recession and severe budgetary constraints, at present the Island government has difficulty coming up with a considerable amount of matching amounts needed to complete this vitally needed construction.

The amendment would accord us the flexibility needed to continue development of the infrastructure necessary to attract industry and continue economic growth to help all sectors of the population.

I hope the Members of the Committee will continue to support its inclusion and any attempt to enhance the cooperative effort of the Federal EPA and our own Island sewer authority in protecting a considerable economic investment in Puerto Rico.

Mr. Chairman, I also would like to address my testimony to Title I which directs the President to prepare and transmit a state of the insular areas report to the Congress. The purpose of the report is to have, in an organized and comprehensive way, the overall policy of the Administration regarding the territories. Although Puerto Rico is not listed among those territories to be included in the report in the original version of S. 2888 ~~2846,~~ I request that we be included and that the Administration be directed to assess its policy towards Puerto Rico as part of their study. I must say, Mr. Chairman, that originally I was very concerned with this Title and did not wish Puerto Rico to be included because I was afraid that the report on the territories would be another, at best, half-hearted effort, and one which would have a negligible impact on policy makers.

The policy of the federal government towards the territories in the past has often been one of benign neglect and a collection of fragmented decisions that fail to present a clear plan for the economic, social and political developments of the areas in tune with the responsibility vested in the federal government. In the case of Puerto Rico, it is frustrating and disheartening to note the ambivalent policies which result in having the U.S. citizens living in Puerto Rico suffer a disproportionate share of the Nation's burden especially in these times of economic distress.

I am hopeful that as a result of the provisions in this bill directing the President to prepare a report to the Congress, there will be a fresh and comprehensive appraisal of the federal government's policy towards its territories and possessions.

In Section 103 of the legislation, there is a listing of the areas to be covered in the study and the report to help the President in conducting the study. It is clear that some of the matters to be included in the study are of greater concern to the other territories which are still on the road to self-government as opposed to Puerto Rico, which enjoys a larger degree of self-government and development consistent with that of a "state", although still not treated in some programs as a "state". Nevertheless, it is important that the Administration use the opportunity provided in this legislation to focus its attention on its obligations to the territories and to devise a plan to enhance the economic, political and social development of the areas.

I urge the member of the Committee to approve this legislation as soon as possible before the end of this session.

Thank you.

STATEMENT OF HENRY L. FEUERZEIG

to the

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

ON S.2729

September 13, 1982

Mr. Chairman, members of the Committee on Energy and Natural Resources, I am Henry L. Feuerzeig, a judge of the Territorial Court of the Virgin Islands, and a delegate to the Fourth Constitutional Convention of the United States Virgin Islands. I also had the pleasure during the Fourth Constitutional Convention of serving as the Convention's chairman of the Committee on Judicial Powers and Functions, and in that capacity of appearing before this Committee on several occasions. This statement, however, should not be interpreted in any way as a statement of the Territorial Court of the Virgin Islands or of the Fourth Constitutional Convention of the Virgin Islands. I have, however, reviewed the substance of this statement with the Honorable Verne A. Hodge, Presiding Judge of the Territorial Court of the Virgin Islands, and with Alexander A. Farrelly, president of the Third Constitutional Convention and legal counsel to the Fourth Constitutional Convention. Judge Hodge generally endorses my comments, but I also will share some of his thoughts with you. Mr. Farrelly has asked me to say he endorses my comments.

First, Mr. Chairman, thank you for the opportunity to submit this statement on S. 2729. I regret that I cannot appear personally, but am required to sit as a District Court Judge by designation to try a medical malpractice case that has been set for trial since May 14, 1982, and which has been pending since 1978.

With some modifications, I strongly support S. 2729 and wish to commend Senator Lowell T. Weicker for introducing it. I believe that it constitutes a significant step forward in the constant evolution toward giving the people of the Virgin Islands greater control over their government. Although, as I stated, I represent no organization or branch of the Virgin Islands government, I believe I can safely say that this bill is totally consistent with the Constitution that was adopted and approved by the Fourth Constitutional Convention of the United States Virgin Islands, and it is consistent with the Constitution that was adopted by the Third Constitutional Convention. Unfortunately, as you know, both of those documents were rejected at the polls.

Obviously, a significant aspect of S. 2729 is that it would make the District Court of the Virgin Islands a district court in the true sense of the word, giving it jurisdiction equal to that of any other United States district court. That alone is a long overdue step and one that I wholeheartedly endorse. More importantly, however, is the fact that S. 2729 provides the means by which a truly local court system can be established in the Virgin Islands by the people's elected representatives.

As you know, Mr. Chairman, today the local court for the Virgin Islands, for all practical purposes, still is the District Court of the Virgin Islands. Although the district court is manned by two highly qualified individuals, the judges of this court are selected by the President of the United States and confirmed by the United States Senate. This is in contrast to S.2729, which will give the Legislature the power to place strictly local matters exclusively before locally appointed judges and still preserve diversity and federal question jurisdiction in the district court. In addition, this bill will permit the establishment of a local appellate court when, in the opinion of our elected leaders, we need it and can afford it. Moreover, three months after passage of this bill, appeals from the local courts will be to an appellate division of the District Court in such cases as are now or may be provided by local legislation. This, of course, will not preclude appeals to the United States Court of Appeals of decisions of the local courts in matters involving federal questions. What it does do, though, is respond immediately to a great majority of the people of the Virgin Islands who believe that the present system of local court decisions being reviewed by a single district court judge is inappropriate, as well as inconsistent with American Bar Association guidelines for the handling of appeals.

Consequently, Mr. Chairman, I believe that this bill is a most significant step forward. I do, however, wish that you would go one step further upon creation of a local appellate court and immediately remove the United States Court of Appeals for the Third Circuit from the appellate process regarding strictly local matters and treat the Virgin Islands as any other state. While I recognize that there is precedent for the 15-year transitional approach suggested in S. 2729, specifically section 4 of the Act of November 8, 1977, 48 U.S.C. §1694c, relating to the Northern Mariana Islands, I do not believe a transitional period is necessary. We already have more than 15 years of experience with the Third Circuit, but if a transitional period must be provided, Judge Hodge and I both believe five years is more than ample time for the court to establish institutional procedures. More importantly, it would reflect more confidence in the people of the Virgin Islands.

Briefly then, if I may, Mr. Chairman, I would like to take Title I section-by-section and give some brief comments, where appropriate. I hope that this will aid the Committee in its review of S. 2729.

Section 101 to amend Section 3 of the Revised Organic Act

This section would authorize the prosecution of violations of federal laws and certain closely related local offenses by indictment or by information and is designed to overcome United States v. Christian, 660 F.2d 892 (3d Cir. 1981), which held that existing law precludes the impanelling of a federal grand jury in the Virgin Islands to investigate the violation of federal laws. Although I recognize this is a uniquely federal matter, I personally believe that the grand jury system is on the wane in the United States and have serious reservations as to whether it would be useful in the Virgin Islands. I also question the need for it.

Section 102 to amend Section 21 of the Revised Organic Act

Proposed subsection 21(a) provides for the establishment by local law of a local appellate court and retention of the district court, and I fully endorse this subsection. A minor point, I see no need for the "establishment by Congress" clause since there can be no question that the District Court of the Virgin Islands is an Article IV court and a creation of Congress, as was recently held in Carty v. Beech Aircraft Corp., Nos. 81-2427, 81-2428, Slip Op. at 13 (3d Cir. May 21, 1982).

I also endorse proposed subsections 21(b) and (c), and particularly endorse subsection (c), which will give the local court, as opposed to the district court, the power to promulgate rules governing the practice and procedure of the local courts, something which also is long overdue, Mr. Chairman.

Section 103 to amend Section 22 of the Revised Organic Act

Proposed subsection 22(a) would confer on the District Court of the Virgin Islands, effective April 1, 1984, the jurisdiction of a bankruptcy court of the United States. I do not favor this provision and suggest that it be amended. The ever-increasing bankruptcy caseload would be better served if the Revised Organic Act was amended to provide for a bankruptcy judge for the Virgin Islands. Depending upon the caseload, the salary of the bankruptcy judge could be fixed at something less than a bankruptcy judge in other districts, but still be considerably more than the $4,500 annual salary now paid. As the work increases, this salary could, of course, be adjusted. Thus the position, in effect, would be part-time. Under no circumstances should the district of the Virgin Islands again be placed in the position of having to depend upon visits by a bankruptcy judge from the District of Puerto Rico. We tried that system once and it was an absolute failure. It did not serve the people of the Virgin Islands, the practicing members of the bar, or the visiting bankruptcy judge. In lieu of the language of Section 22(a) that reads, "and effective April 1, 1984, that of a bankruptcy court of the United States," I would suggest language somewhat similar to that now embodied in Title I, section 103 of H.R. 6859.

I also have serious reservations with respect to the last sentence of the proposed Section 22(a), which provides:

> The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved except the laws relating to income tax enacted by the Legislature of the Virgin Islands.

Similar language was proposed in 1981 by the Department of the Interior in its proposal to implement the constitution proposed by the Fourth Constitutional Convention of the Virgin Islands. Senator Weiker, however, in introducing S. 1674, deleted that language. I believe it should be deleted again as it does not appropriately belong in this legislation.

I recognize that this provision reflects the thinking of the Department of Justice, as voiced by Herman Marcuse of the Office of Legal Counsel in his statement on October 21, 1981 to

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this committee with respect to S. 1674. In his statement, Mr. Marcuse said:

> At present the jurisdiction of the federal courts over cases involving the income tax laws applicable to the Virgin Islands appears to be based only on the Virgin Islands Code. Dudley v. Commissioner of Internal Revenue, 258 F.2d 182, 188 (3d Cir. 1958). Hence it could be withdrawn by the Legislature of the Virgin Islands.

I cannot concur in Mr. Marcuse's analysis. As you know, pursuant to Section 28(a) of the Revised Organic Act:

> All persons whose permanent residence is in the Virgin Islands . . . shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands.

Clearly, therefore, if an individual fails to meet his Virgin Islands income tax obligations, he also has failed to satisfy his United States income tax obligations. As such, this would constitute a violation of federal law, and under the proposed Section 22(a) the District Court of the Virgin Islands would be able to hear the matter because it would "have jurisdiction of a district court of the United States."

In addition, the Virgin Islands income tax law, although a "mirror" of the federal law, is considered a local tax. Therefore continued local administration of the tax law is appropriate and should be maintained at the present level, or increased, rather than cut back as proposed in S. 2729. The Attorney General of the Virgin Islands presently prosecutes income tax cases within the jurisdictional limits of the Territorial Court in that court, but does not have the authority to conduct criminal prosecutions in the District Court without permission from the United States Attorney. Consequently this proposed change could hinder criminal tax law enforcement in the Virgin Islands.

Finally, if there is to be any change in income tax laws which apply to the Virgin Islands, it should not be attempted on a piecemeal basis in an act designed to amend the judicial system. Rather, such changes, if they are to be enacted, should be by way of a comprehensive bill dealing with tax matters. In that respect Juan Luis, the Governor of the Virgin Islands, repeatedly has offered to discuss outlines of such a measure with the Department of Interior, the Department of Justice, and the Department of Treasury upon invitation. I am certain his Administration continues to adhere to that offer.

Proposed subsections 22(b) and (c) appear to be consistent with the overall intent of S.2729 and I endorse them with one slight modification. These proposed subsections in conjunction with the amendment of Section 21 of the Revised Organic Act would permit the Virgin Islands, by local law, to vest exclusive jurisdiction over purely local matters in a local court system, an approach which I also wholeheartedly endorse. I am concerned, however, that the divestiture of jurisdiction from the District Court and placement of jurisdiction in the Virgin Islands' local courts be done when the Territory is ready to do so and when the Territory is in a position to bear the cost that such a change will bring. Accordingly, I propose inserting in proposed section 22(b) the word "exclusively" before the word "vested." This change would make the proposed section read:

> In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have original jurisdiction in all causes in the Virgin Islands, the jurisdiction over which is not exclusively vested by local law in the courts of the Virgin Islands . . .

Section 104 to amend Section 23 of the Revised Organic Act

Consistent with my earlier comments, I recommend modification of the proposed Section 23. That section, as now drafted, provides that for fifteen years after the establishment of a local appellate court the Third Circuit Court of Appeals will continue to have jurisdiction of appeals from all final decisions involving the Constitution, treaties, and laws of the United States. While a transitional period is consistent with the work of the Fourth Constitutional Convention, it is inconsistent with the work of the Third Constitutional Convention and with putting the local court system of the Virgin Islands on a par with that of the 50 states, Puerto Rico, and the District of Columbia. Therefore, I suggest changing the semicolon after the word "proceedings" to a period and deleting the balance of the language of the first sentence of proposed Section 23. Thus, Section 23, in its entirety, would read:

> The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several states in such matters.

By this simple change you would provide the means for transforming the Virgin Islands court system into a truly local system.

Section 105 to add a new Section 23A of the Revised Organic Act

Again, I wish to endorse strongly this section as constituting a most important step toward greater self-government for the Virgin Islands and a recognition of the view of many Virgin Islands residents that our present appellate system is inappropriate.

This section, of course, is consistent with the proposed Constitution of the Fourth Constitutional Convention, which provided for an interim appellate court similar to the appellate division of the district court created by this proposed section. This change clearly reflects the view of a majority of Virgin Islands residents that the present system of reviewing decisions of local courts by a single judge is inappropriate. This section also is in accord with the recommendations of the Committee on Judicial Powers and Functions of the Fourth Constitutional Convention, which recommended the immediate establishment of a three-judge appellate panel to sit until local legislation was enacted to create a local appellate court. It also is in keeping with the recommendations of the American Bar Association. This provision also reflects the obvious consideration that the Third Circuit Court of Appeals of the United States should not be burdened with reviewing truly local issues, especially where the litigants have been afforded one stage of appellate review.

Judge Hodge asked me to express a concern that he has with respect to proposed subsection 23A(b), which authorizes the appointment of one local court judge to the appellate division of the district court. He does not oppose the establishment of the appellate division, but he does oppose having a local court judge serve on the appellate division to review the decisions of his fellow judges. Second, he is concerned as to how long such a judge would serve, and what provisions, if any, would be made for compensation, staff, and facilities.

Section 106 to amend Section 24 of the Revised Organic Act

I endorse this section as written. It provides a most significant change and that is in the term of district court judges from eight to ten years. This change also was strongly recommended by the Fourth Constitutional Convention and solves a very significant problem with respect to retirement benefits of district court judges.

As I know you are aware, Mr. Chairman, under existing law district court judges of the Virgin Islands now are appointed for terms of eight years and, therefore, pursuant to 28 U.S.C. §373 do not become eligible for retirement benefits until they have served ten years. This has had the effect of creating a severe hardship on judges in the Virgin Islands. As you may know, we recently had a situation where the late Warren H. Young was appointed to and served an eight-year term. Near the end of his term, it was announced that he was not going to be reappointed. As a result, he was not eligible for retirement benefits. It was an unfortunate circumstance and one that this section will rectify. Accordingly, I strongly endorse this proposed section.

Sections 107 and 108 to amend Sections 25 and 27 of the Revised Organic Act

I endorse these sections. They are necessary to implement the other provisions for restructuring the courts. Section 25 is amended to restate generally the final sentence of that section. The second sentence referring to sessions of the court has been omitted since it is covered by 28 U.S.C. §139 and the subject matter of the last two sentences has been transferred to Section 24(b). Section 27 is amended by removing the term "inferior courts" and by substituting "courts established by local law."

Section 110 to repeal sections of the Organic Act of 1936

This section repeals several provisions of the Organic Act of June 22, 1936 and is almost identical to section 119 of S. 1674. Section 119 of S. 1674, however, did not propose repeal of Section 18 of the 1936 Organic Act and this proposed section does. Section 18, in part, provides that "the laws of the United States applicable to the Virgin Islands on the date of enactment of this act [the 1936 Organic Act] and all local laws and ordinances in force on such date in the Virgin Islands, not inconsistent with this act, shall continue in force and effect."

It has been suggested that Section 18 has been replaced by Section 8(c) of the Revised Organic Act of 1954, 48 U.S.C. 1574(c). I am not certain that that is a correct statement and urge caution, or at least some reference in the analysis or discussion on this section to make that intent clearly understood.

Judge Hodge has even stronger reservations than I do. He opposes repeal of Section 18 because of its indirect relationship to other tax provisions. In his opinion, piecemeal repeal of fiscal provisions without comprehensive analysis may cause problems. Judge Hodge contends that Section 8(c) of the Revised Organic Act does not replace section 18 of the 1936 Organic Act.

S. 1674 also proposed to repeal Sections 35 and 37 of the Organic Act of 1936. S. 2729 does not repeal Section 35 and that is wise since it relates to taxes, duties and fees, but I do not see a need for retaining Section 37 of the 1936 Act, which section relates to the judicial process.

Again, Judge Hodge believes all provisions dealing with fiscal and monetary provisions of the Organic Acts should be left intact until the fiscal provisions of the Revised Organic Act are addressed in a comprehensive way just as the judicial provisions are addressed in this bill.

Section 111 which repeals several statutes

All of these proposed revisions appear to be in order. I have only one reservation, and that is with respect to the repeal of Section 2 of the Act of March 31, 1917. I am under the impression that it is believed in some quarters that this section was replaced, first, by Section 17 of the Organic Act of 1936, 48 U.S.C. §1405q, and that it now is incorporated in Section 8(c) of the Revised Organic Act, 48 U.S.C. §1574(c). Again, as with respect to repeal of Section 18 of the Organic Act of 1936, I am not as confident as others that these provisions are preserved by Section 8(c) of the 1954 Revised Organic Act. Judge Hodge, for the same reasons I

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mentioned with respect to Section 18 of the Organic Act, strongly opposes repeal of this section. Again, I see no harm in keeping these two sections on the books.

Finally, Mr. Chairman, while I recognize that this legislation is principally concerned with reformation of the judicial system of the Virgin Islands and identification of those provisions of federal law contained in earlier Organic Act legislation that has been superceded by subsequent legislation but never repealed, I also would like to suggest some other modifications of the Revised Organic Act. I hope that you and the Committee will find these suggestions worthy of consideration in this bill. If for some reason you feel it is inappropriate to have them made a part of this bill, then may I suggest that they be embodied in other legislation.

First, I would like to propose a new section that would amend section 8(c) of the Revised Organic Act of the Virgin Islands, 68 Stat. 500, 48 U.S.C. §1574(c), which is referred to in section 110 of S. 2729. In particular, I propose deleting the last clause of section 8(c) which reads:

> . . . subject to the power of Congress to annul any such act of the Legislature.

This language is an anachronism. The only limitation on the power of the Legislature of the Virgin Islands should be the United States Constitution, and, as a result, by virtue of the supremacy clause, the federal laws applicable to the Virgin Islands, and the Congressional oversight powers under Article IV of the United States Constitution, which Congress has exercised with restraint.

Not repealed, but which also should be repealed, are subsections 8(d) and (e) of the Revised Organic Act of 1954. These two subsections provide for the establishment of a commission to survey the field of federal statutes and for the Secretary of Interior to arrange for the preparation of a code of laws. Both of these tasks already have been accomplished. Thus, there is no need to retain these provisions.

In addition S.1674 proposed amendment of Section 29 of the Revised Organic Act. In particular, I recommend the language of section 113 of S.1674, which reads:

> Section 113. Section 29 of the Revised Organic Act of the Virgin Islands, 68 Stat. 509; 48 U.S.C. 1543, is amended to read as follows:
>
> > Section 29. All members of the Legislature of the Virgin Islands, the Governor, Lieutenant Governor, all judges and all officials of the Government of the Virgin Islands who report directly to the Governor shall be citizens of the United States.

This modifies the oath provision and is a progressive change that should be made.

Finally, I recommend that Section 12 of the Revised Organic Act (68 Stat. 503, 48 U.S.C. §1593), which provides for the removal of a Governor by the recall process, be broadened to include a provision for the removal of any elected official of the Government of the Virgin Islands. In this regard, I would refer you to Article XII, section 2, of the proposed fourth constitution. I do not necessarily endorse the precise language of this section, but believe that the concept should be included in any amendment of the Revised Organic Act.

With those comments, Mr. Chairman, I again wish to thank you and the members of the Committee for the opportunity to submit this statement and my regret of not being able to appear personally.

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